THREE LETTERS,

WRITTEN, AND ORIGINALLY PUBLISHED,

UNDER THE SIGNATURE OF

A SOUTH CAROLINA PLANTER.

THE FIRST,

ON THE CASE OF

JONATHAN ROBBINS;

DECIDED UNDER THE TWENTY-SIXTH ARTICLE OF THE TREATY WITH GREAT-BRITAIN, IN THE DISTRICT COURT OF THE UNITED STATES,

FOR SOUTH CAROLINA.

THE SECOND,

ON THE RECENT CAPTURES

OF

AMERICAN VESSELS BY BRITISH CRUISERS,

CONTRARY TO THE LAWS OF NATIONS, AND THE TREATY BETWEEN THE TWO COUNTRIES.

THE THIRD,

ON THE RIGHT OF EXPATRIATION.

BY CHARLES PINCKNEY, ESQUIRE,

SENATOR IN CONGRESS, FOR SOUTH-CAROLINA.

TO WHICH IS ADDED,

AN APPENDIX,

CONTAINING SUNDRY DOCUMENTS CONCERNING JONATHAN ROBBINS.

PHILADELPHIA:

AURORA-OFFICE,

1799.

ADVERTISEMENT.

THE following Letters written by Charles Pinckney, Esq. *Senator in Congress from South-Carolina, originally appeared in a Charleston paper. Their importance is a sufficient motive for their appearing in the form of a book. To the letters is annexed an Appendix, containing matter concerning the unfortunate* Jonathan Robbins, *which has been deemed proper to be added, in order that the public should possess the whole of what has been published concerning this unprecedented Case.*

TWO LETTERS,

OF

A SOUTH CAROLINA PLANTER,

ON THE CASE OF

JONATHAN ROBBINS;

AND THE DEPREDATIONS

OF THE BRITISH CRUIZERS.

As Congreſs muſt by law provide at their next ſeſſion for any ſimilar caſes which may occur under the Britiſh treaty, and as it is of general importance to the citizens of the United States, the following examination of the caſe of Jonathan Robbins, lately decided in the Diſtrict Court of South Carolina, is with deference, ſubmitted to their conſideration.

Fellow Citizens,

AS I believe you have not been much troubled with my remarks on any ſubject, I hope you will more readily excuſe the favor I now aſk, in requeſting your attention to the preſent. I am induced to make them becauſe the question is of very great public conſequence, and involves the deareſt and moſt valuable rights of every man in the United States. It reaches all ſiuations, as well the elevated and opulent, as the moſt indigent. It affects the knowlege and independence of our judicials in the moſt important manner; and as I know it has excited the ſenſibility of the people, and muſt be ſo far made the ſubject of enquiry in congreſs, as to enable them to provide for ſimilar caſes, I have ſuppoſed ſome examination of it may be neceſſary, in that ſpirit of deference and delicacy in which all ſuch enquiries ſhould be conducted.

I ſhall not go into a definition of the principles of a free government, and the bleſſings its citizens ought to expect; becauſe few of our own, even amongſt the moſt illiterate, are ignorant of the nature of a repreſentative government, the

right of ſuffrage, and the ineſtimable privilege of the trial by jury, in all caſes in which their characters, lives, or property are concerned. To a people ſo informed, it is ſcarcely neceſſary to remark, that to men of feeling the value of character, of honorable fame, is dearer than life or property or even the moſt tender connections; that to all men, whether of the niceſt honor or otherwiſe, the love of life is dearer than that of property, and that they would readily ſacrifice the one to preſerve the other. Hence it follows, that thoſe privileges which guard the characters and lives of our citizens, are viewed with a more jealous eye, and will be aſſerted with more firmneſs and promptitude than even thoſe which protect their properties, vigilant as they are with reſpect to theſe. A number of our citizens therefore, believing that the ineſtimable privileges ſecured to them by the conſtitution and laws of the United States, have been affected in the caſe of *Jonathan Robbins*, that it is one which may, if eſtabliſhed as a precedent, reach ſome valuable inhabitants of this country, and to the intent that theſe privileges ſhould be more carefully guarded by a poſitive law in future, the following remarks are ſubmitted, with a view to bring this buſineſs more fully before the public than it has hitherto been.

The following is the ſtatement of the caſe with the accompanying affidavits.

FEDERAL DISTRICT COURT.

For the Diſtrict of South Carolina, July, 25, 1799.

Present his honor Judge BEE.

THE queſtion before the court was grounded on a habeas corpus, to bring up Jonathan Robbins, who was committed to gaol in February laſt, on ſuſpicion of having been concerned in a mutiny on board the Britiſh frigate Hermione, in 1797, which ended in the murder of the principal officers, and carrying the frigate into a Spaniſh port; and on a motion of counſel, in behalf of the conſul of his Britannic majeſty, that the priſoner ſhould be delivered up, (to be ſent to Jamaica for trial) in virtue of the 27th article of the treaty between the United States and Great Britain, which article runs thus:

"Article 27. It is further agreed, that his majeſty and the United States, on mutual requiſitions, by them reſpectively, or by their reſpective miniſters or officers authorized to make the ſame, will deliver up to juſtice all perſons, who being charged with murder or forgery, committed within the

jurisdiction of either, ſhall ſeek an aſylum within any of the countries of the other: provided that this ſhall only be done on ſuch evidence of criminality as, according to the laws of the place where the fugitive or perſon ſo charged ſhall be found, would juſtify his apprehenſion and a commitment for trial, if the offence had there been committed. The expence of ſuch apprehenſion and delivery ſhall be borne and defrayed by thoſe who make the requiſition and receive the fugitive."

The commitment of the priſoner, and the conſequent demand made of him by the conſul of his Britannic majeſty here, were grounded on the two following affidavits:

South Carolina District.

William Portlock, a native of Portſmouth, in the ſtate of Virginia, upwards of eighteen years old, appeared before me, and being duly ſworn and examined, ſaith, that he was one of the crew before the maſt, in the ſchooner Tanner's Delight, which was commanded by captain White, who arrived here about three weeks ago; that a perſon who anſwered to the name of Nathan Robbins came alſo in the ſaid veſſel before the maſt with him; that he, ſaid Robbins, is a tall man, middle ſize, had long black hair, dark complexion, with a ſcar on one of his lips; that on or about laſt Chriſtmas night he was preſent, and heard the ſaid Robbins, talking in the harbor of the city of St. Domingo, to ſome French privateerſmen, who were on board the Tanner's Delight, when and where he informed them in his hearing that he the ſaid Robbins was boatſwain's mate of his Britannic Majeſty's frigate Hermione, when ſhe was carried into the port Cavillia, and added that they had no occaſion to take any notice of that. And after the above time, ſometimes when he was drunk, he, the ſaid Robbins, would mention the name of the Hermione, and ſay, bad luck to her and clench his fiſt.

His
WILLIAM ⋈ PORTLOCK's
Mark.

Sworn before me, this 20th Feb. 1799.

THOMAS HALL, J. P. Q. U.

United States of America, S. Carolina Diſtrict. } ſſ.

PERSONALLY appeared before me lieutenant John Forbes, who being duly ſworn on the Holy Evangeliſts of Almighty God, depoſeth, that a perſon confined in the gaol of this diſtrict, who calls himſelf Nathan Robbins, but whoſe real name this deponent believes to be Thomas Naſh, was a ſeaman on board the Hermione Britiſh frigate, in which the deponent was a midſhipman, from the 8th of February,

1797, until the 30th of Auguſt following, during which time the ſaid Naſh was perſonally known to this deponent: that this deponent was removed from the ſaid frigate to the ſloop of war Diligence, on the ſaid thirtieth day of Auguſt 1797; this deponent further depoſeth, that on the 19th of September following, he was ſent on board the ſaid frigate, at which time he ſaw and left the ſaid Naſh in the ſame ſtation on board that veſſel, as he was at the time of this deponent's being a midſhipman therein—That on the 22d day of the ſaid month, the crew mutinied on board the ſaid frigate, killed the principal officers, piratically poſſeſſed themſelves of her, carried her into Laguira, and there diſpoſed of her to certain ſubjects of his Catholic majeſty. That the ſaid Thomas Naſh was one of the principals in the commiſſion of the ſaid acts of murder and piracy, whoſe conduct in that tranſaction has become known to this deponent by depoſitions made, and teſtimony given in courts-martial, where ſome of the ſaid crew have been tried.

JOHN FORBES.

Sworn before me, this
18th April, 1799.

THOMAS BEE.
Diſtrict Judge S. Carolina.

Upon a candid and legal review of theſe depoſitions, the teſtimony was ſo ſlight and trifling on the part of Portlock, and ſo wholly hearſay on the part of Mr. Forbes, that I was clearly of opinion it did not even juſtify a commitment for trial here; and that was Robbins now in this ſtate, and brought up by habeas corpus, to have the nature of the teſtimony againſt him and his caſe fully argued, that, if not diſcharged he would at least be conſidered as entitled to bail. I would almoſt be content to rest the deciſion of the queſtion here, even had I not uſed the unanſwerable arguments which have occurred reſpecting juriſdiction in this caſe, "meaning excluſive territorial juriſdiction," and nothing elſe.

On the ſubject of the juriſdiction, the part of the act of the Britiſh parliament, for carrying into effect their treaty with the United States, and which was publiſhed in your gazette this morning, completely proves what I have obſerved. In this act not one word is ſaid of any fugitives found within their dominions, charged with having committed offences at ſea, on board American veſſels. It is entirely confined to caſes within the juriſdiction of each, meaning moſt clearly "excluſive territorial juriſdiction." For had the Britiſh parliament conſidered "ſhips" as the territory meant in the treaty, in an act which appears to go ſo much into detail, they certainly would, by a particular clauſe, have provided for caſes ariſing at ſea. To prove however, unqueſtionably, that

the Britiſh government conſidered the meaning of the word "territory" in the ſame light that I do, I have just received information, that not long ſince the crew of an American veſſel roſe upon the captain, whoſe name was "Little," murdered him and his mate, and piratically carried the veſſel off; that they were afterwards taken in England, tried and executed. Nothing can more clearly prove their idea of the meaning of the word territory, than this; becauſe had they thought otherwiſe, instead of trying and executing, they would have confined theſe men until the American government were acquainted with it, and ſent to demand and carry them away for trial in their own courts.

His honor the Judge had received a letter ſome days before from the ſecretary of ſtate of the United States, mentioning, that an application had been made by the Britiſh miniſter, Mr. Liſton, to the preſident, for the delivery of the priſoner under the 27th article of the treaty, and containing theſe words ——The preſident "Adviſes and requeſts" you to deliver him up.

This letter was not read in Court, though it was ſhewn to the counſel on both ſides.

The following certificate and affidavit were produced in behalf of the ſaid priſoner.

United States of America, }
State of New-York. }

By this public inſtrument, be it known to whom the ſame doth or may concern, That I, John Keeſe, a public notary, in and for the ſtate of New-York by letters patent under the great ſeal of the ſtate, duly commiſſioned and ſworn; and in and by the ſaid letters patent, inveſted "With full power and authority to atteſt deeds, wills, teſtaments, codocils, agreements, and other inſtruments in writing, and to adminiſter any oath or oaths, to any perſon or perſons;" Do hereby certify, that Jonathan Robbins, who hath ſubſcribed theſe preſents, perſonally appeared before me, and being by me duly ſworn, according to law, depoſed, That he is a citizen of the United States of America and liable to be called into the ſervice of his country, is to be reſpected accordingly at all times by ſea and land.

Whereof an atteſtation being required I have granted this under my notarial firm and ſeal.

Done at the city of New-York, in the ſaid ſtate of New York, the 20th day of May, in the year 1795.

Quod atteſtor.

JOHN KEESE.
Notary public, and one of thoſe for the city of New-York.

JONATHAN ROBBINS.

Jonathan Robbins, mariner, a priſoner now in the cuſtody of the marſhal of the diſtrict court of the United States for South Carolina, being duly ſworn, ſaith he is a native of the ſtate of Connecticut, and born in Danbury in that ſtate; that he has never changed his allegiance to his native country; and that about two years ago he was preſſed from on board the brig Betſey of New-York, commanded by capt. White, and bound for St. Nichola Mole, by the crew of the Britiſh frigate Hermione, commanded by captain Wilkinſon, and was detained there contrary to his will, in the ſervice of the Britiſh nation, until the ſaid veſſel was captured by thoſe of her crew who took her into a Spaniſh port by force; and that he gave no aſſiſtance in ſuch capture.

JONATHAN ROBBINS.

Sworn this 25th July, 1799, before me,

THOMAS HALL, Federal Clerk, and J. P. Q. U.

The ſignature made by the priſoner to this affidavit in court, appeared to be in the ſame hand writing as the ſignature to the one made in 1791, from which circumſtance it is preſumable, that Jonathan Robbins is the priſoner's real name. The body of the affidavit made in New York, in 1795, was printed; the names, dates, ſignatures, &c. were filled up in writing; it had the notarial ſeal of John Keeſe, eſq. affixed, and had the appearance of being a genuine paper, deemed at that day by ſeamen to be a protection.

It appears however, by the reſult, that theſe affidavits, and the queſtion, whether the priſoner was an American and an impreſſed ſeaman, or not? Were, in the opinion of the court, altogether immaterial; the court would have felt itſelf bound to deliver up any reſpectable citizen of the U. States, if claimed under the circumſtances of the priſoner.

It appears by the preceding ſtatement that the judge, under the circumſtances of this caſe, would feel himſelf obliged to deliver up any "reſpectable citizen of the United States." I do not mention this becauſe he uſed the words "reſpectable citizen;" but I do it to ſhew, that this is a queſtion which ſeriouſly concerns every part of the community, and that no citizen, whoſe buſineſs may oblige him to go to other countries is hereafter ſafe from ſuch demands. It will not depend upon him to ſay, he is not a mariner, or to ſhew certificates or proofs to the contrary, it will depend upon the force with which he is attacked, and the temper or violence of the officer who directs it. Inſtances it is ſaid, have lately occurred where not only the ſeamen, but the paſſengers have been impreſſed, who, although declaring they were not ſeamen, were ſtill impreſſed as ſuch, and obliged to perform their duties. No production of papers, no intreaties availed them; they were

compelled to ſubmit. Had theſe men been enterpriſing, or an opportunity offered, and they had poſſeſſed themſelves of their oppreſſors, and brought them into port; or had they, in the attempt to regain their freedom, been obliged to deſtroy them, while the world would have applauded the act, the judge muſt, from the deciſion, have delivered them to a ſimilar demand, neither influence, friends, nor fortune could ſave them; however ſuperior in theſe, in political privileges they were only equal to the unknown and friendleſs Robbins; a conſiſtent and inflexible magiſtrate muſt view them with the ſame impartial eye; he muſt give to them the ſame conſtruction of the law or conſtitution; he could not vary them without the immediate loſs of character. An enlightened people therefore will as attentively, nay, they ought more carefnly to guard them in the perſon of a poor or unprotected, than a rich or conſiderable man. The latter will always find powerful friends to ſupport and protect his privileges; while the rights of the former may in ſilence and with impunity be unattended to, merely becauſe he is unknown, and has not an advocate to aſſert them. This would probably have been the caſe in the preſent inſtance, had not ſome gentlemen voluntarily offered themſelves to examine and diſcuſs its conſequences. The public are obliged to them; it is an excellent example; I hope it will be followed upon every occaſion, and that it will make us infinitely more vigilant of our rights than ever. We muſt never forget that in this country the poor and the rich, the humble and the influential, are entitled to equal privileges; that we ought to conſider a violation of the rights of the moſt indigent and unprotected man, as an injury to the whole; while we have a pen to guide, or a voice to lift, they ſhould be conſtantly exerted againſt the exerciſe of tyranny or oppreſſion, by whatever nation committed, or to whomſoever the violence may be done.

I now proceed to examine the caſe, and the nature of the evidence on which Mr. Bee determined to deliver Jonathan Robbins, to the demand of the Britiſh miniſter.

I believe it is the firſt inſtance which has occurred, of a demand under the Britiſh treaty in the United States; certainly, in this ſtate. The law reſpecting the delivery of fugitives from juſtice was ſilent on the delivery of fugitives to foreign powers and therefore, the judge conceived himſelf not only authoriſed but bound to interfere. By his own ſtatement it appears to have been entirely a new caſe, in which I ſhould ſuppoſe he had conſiderable diſcretion, and was not bound by any particular legiſlative act to deliver on a mere affidavit, or any "trivial ſurmiſe or hearſay evidence." It

was his duty to have maturely conſidered what were the legal import and meaning of the words, "Charged with murder and forgery," and how far, according to the laws of this country, there was ſuch evidence of criminality as would juſtify the ſending any man, claiming to be a citizen, and not diſproved as ſuch, from his country, to be tried by a foreign tribunal, and moſt probably by a court martial.—The judge's auditors muſt have been ſurpriſed when they heard him ſay, "that no man can be puniſhed by the laws of Great-Britain without a trial; if he is innocent he will be acquitted; if guilty, he muſt be puniſhed." This obſervation was by no means applicable to the preſent caſe, the true queſtion before the court was, whether Jonathan Robbins, producing a notarial certificate of being a citizen of the United States, and aſſerting that he was impreſſed by violence into the Britiſh ſervice, was, from the nature of the affidavits before him, to be torn from his conntry and connections, and deprived of all the rights of citizenſhip, and ſent to be tried by a foreign tribunal, acting without a jury, in the moſt ſummary manner, and by martial law.

I do not pretend to equal legal knowledge with the judge; but, I have ſometimes attended to points of this kind, and as far as I am able to form, am clearly of opinion that the priſoner, not having been diſproved to be a citiaen of the United States, there was not ſuch evidence before the court as juſtified the judge in giving ſo important an order, as to ſurrender him to the demand of the Britiſh conſul. This I will endeavor to prove from the examination of the affidavits, and the nature of the teſtimony required by our laws, as ſufficien even to juſtify the putting a citizen upon his trial in this country, without adding to it the inexpreſſible diſgrace and danger of ſending him to be tried by a foreign tribunal.

The first affidavit is William Portlock, on which I ſuppoſe the judge could not have rested at all; he appears from his age, and the ſtatement in the affidavit, to have been a ſailor lad, as little known in this country as Robbins himſelf, and to have been ſo illiterate as not to have been able to write his name. This lad ſays, he heard a perſon who anſwered to the name of Nathan Robbins, declare he was boatſwain's mate on board the Hermione, when ſhe was carried into the port of "Gavilla;" and that ſometimes, when he was drunk, he would mention the Hermione, clench his fist, and ſay, "bad luck to her."

From this statement it reſults, that this Portlock was an illiterate ſailor lad, ſo ignorant as not to know the name of the port the frigate was carried into. It does not appear that he

was ſhewn the priſoner, or that he could ſwear that Jonathan Robbins was the perſon he knew on board the Tanner's Delight; he avowedly knew nothing of himſelf. He does not ſay the perſon he ſpoke of, confeſſed to him that he was concerned in the murder or piracy charged on him. From the youth, ignorance, and ſituation of Portlock; from the vague and uncertain account he gave, I muſt ſtill be of opinion that the judge could not have reſted at all on his teſtimony; he knew, that even if Portlock had ſworn poſitively to the identity of Robbins, and the latter had, when ſober, made any confeſſion of guilt to him, that it was the duty of a judge not to have attended to it.—Any confeſſion of a criminal muſt be made in a particular manner, before magiſtrates, or in open court, to operate to conviction. An elegant writer, treating on this ſubject, ſays: 'the confeſſion of a criminal when taken even before a magistrate, can rarely be turned againſt him, without obviating the end for which he must be ſuppoſed to have made it. Beſides we have known inſtances of murders avowed, which never were committed; of things ſtolen, which had never quitted the poſſeſſion of the owner."

The evidence of words alledged to have been ſpoken by the perſon accuſed, and connected with the criminality of the charge, ought alſo to be received with great diſtruſt. Such words are either ſpoken in the zeal of unſuſpicious confidence, and cannot be repeated without a breach of private faith, which detracts much from the credibility of the witneſs, or, in the unguarded hours of boaſting diſſipation, in which caſe they are not unlikely to be falſe in themſelves, and very likely to be falſely repeated.

If every ſituation, therefore, in which Portlock can be viewed as a witneſs, or the testimony he gave examined, it muſt at once be ſeen, that it was not ſuch as a grand jury could have found a bill on, or ſuch as will be conſidered ſufficient to juſtify the delivery the judge has ordered. It muſt therefore have been altogether on the ſingle teſtimony of lieut. Forbes he ordered it, and this remains to be examined.

The whole of lieutenant Forbes's examination ſays, that a man confined in the gaol of this diſtrict, who calls himſelf Robbins, but whoſe real name he believes to be Thomas Naſh, was a ſeaman for a certain term on board the Hermione; that after he left the Hermione, ſhe was ſeized by the crew, and carried into an enemy's port; and that he has heard, from the depoſitions of others in courts martial, that the man whom he believes to be named Thomas Naſh, was a principal in the commiſſion of the ſaid acts of piracy and murder, &c.

From this account, Mr. Forbes has confeſſed that he knows nothing of himſelf—that he was not ſure what the priſoner's name was, but that he believes it to be Thomas Naſh, and what is extremely important, he does not attempt to ſay he is an Iriſhman, and not an American, or that he was not impreſſed into the Britiſh ſervice. But that from the depoſitions of others, and what he has heard, he conſiders him as one of the principals in the ſaid act. He does not explain what is the nature of the teſtimony he has heard on the ſubject, as it reſpects Naſh—by whom given—whether by reſpectable, or unprincipled witneſſes—by ſuch as were intimidated and forced into confeſſion of any thing;---or by ignorant and illiterate men, (without a jury to interpoſe their lenient and impartial deciſions) before a court of ſtrict military officers, the ſeverity and diſpatch of whoſe decrees they are every moment fearing to experience themſelves.

His teſtimony, therefore, being altogether hearſay, ought in ſtrictneſs of law, to have operated leſs forcibly upon the mind of the judge, than even Portlock's, for however more reſpectable as an officer and a gentleman, Mr. Forbes is, yet when he tells you himſelf he was not on board the frigate when the murder and piracy was committed, and that he knows nothing but by hearſay, either from the relations or depoſitions of others, he at once comes within that deſcription of teſtimony which the laws of England, and the deciſion of the beſt judges, and our laws borrowed from them, forbid either a judge or a jury to receive in any caſe affecting the life or a limb of a ſubject of the one, or a citizen of the other.

This being the ſtate of the evidence before the judge, two important queſtions ariſe.

1ſt. Whether the judge was ſtrictly authoriſed; and if there was a doubt, whether he ought to have decided alone upon this queſtion? And,

2dly, Whether in deciding, he had any and what diſcretion, as to the nature of the evidence to be required, and whether his deciſion was ſuch as the ſecurity of the perſonal privileges of our citizens, or the policy of the United States, demanded.

To the firſt queſtion—It appears that from the law of congreſs reſpecting the delivery of fugitives from juſtice from one ſtate to another, being ſilent, the judge was of opinion, on the application being firſt made to him, that it was a matter for executive interference; but that upon reconſideration, as the law and the treaty were ſilent, he was under the neceſſity of deciding. I think a further view of this ſubject muſt have, by this time, convinced him that he was miſtaken, and that no poſſible conſtruction, that he can give to the 3d article of

the conſtitution, can juſtify the opinion he formed, of his having a right to decide on this caſe. The article reſpecting the judicial, after veſting in congreſs the right to eſtabliſh ſuperior and inferior tribunals, defines the important powers they ſhall exerciſe, but leaves the boundaries of each to be aſcertained by congreſs. They have accordingly detailed the duties and fixed the limits of the Supreme, Circuit, and Diſtrict Courts, in a manner ſo clear, that it is aſtoniſhing a doubt ſhould have for a moment ariſen as to the Court really having juriſdiction to decide this queſtion. The diſtrict courts have no right to decide on any crime, where the puniſhment is to exceed 30 ſtripes, 100 dollars fine, and ſix months impriſonment: in any caſe exceeding theſe and particularly for capital offences, however, the judge like any other magiſtrate, may on proper teſtimony commit for trial: here he has no right to decide: this authority is given to the circuit court.

Had therefore Robbins been committed for trial in this ſtate, could Mr. Bee have tried him? Certainly not—he muſt have remained to be tried by the circuit court.

With what authority, therefore, could he decide upon a queſtion, which not only went to diveſt the priſoner of his right of citizenſhip, baniſh him from his country, and deprive him of the trial by jury; but alſo to diſpoſſeſs the circuit court of a right to decide upon as new, delicate, and important a ſubject as ever came before them: one which I hoped would have been reſerved for much more ample diſcuſſion and conſideration, and in which I ſhould have ſuppoſed the public would have been pleaſed to hear the opinions of all the moſt experienced council at the bar, and to have ſeen decided by the ſupreme court.

It is no anſwer to ſay, that the 27th article of the treaty ſpeaks of commitment; becauſe the latter clauſe qualifies it, and makes this commitment depend upon the evidence of criminality according to our laws; and there is ſurely an aſtoniſhing difference between a mere commitment for trial, and a delivery over to a foreign tribunal. Nor is it more juſt to ſay that the law of Congreſs reſpecting fugitives from juſtice, in the different ſtates, makes them deliverable on a bill found, or by an affidavit, becauſe they are only removed from one ſtate to another, where the ſame laws, ſame right of jury, and ſame forms exiſt; and what is equal to all, the invaluable right of habeas corpus, where a priſoner, improperly committed, can, after delivery and removal, demand to be brought before a judge, and have the reaſons of his confinement examined. But where is the habeas corpus that can, in this ſituation, reach an unfortunate American? How-

ever ſlight or unfounded the accuſation againſt him, or erroneous the opinion of the ſingle judge who delivered him may be, when once delivered he is for ever deprived of this invaluable privilege. The moment the order is given, he is hurried in chains on board an armed cutter, from whence, on his arrival in a diſtant and foreign port, he is immediately transferred, to another veſſel, on whoſe deck, after a ſummary military trial, he is doomed to meet his fate.

I will pauſe here, and aſk you, my countrymen, if there is no difference between this, and an ordinary commitment by a magiſtrate for trial here?—Your own good ſenſe, and the ſecurity you muſt wiſh to the rights of your fellow citizens and yourſelves, will beſt dictate the anſwer you ſhould give.

There is another important reaſon why the judge ought not, upon this occaſion, ſingly to have decided. I think if it had occurred to him he certainly would have poſtponed the deciſion, until the meeting of the circuit court: it is this—That however all nations may have agreed upon the propriety of delivering up fugitives from juſtice, in the caſe of forgery; yet, that in times of war, and particularly in revolutions, when different nations hold ſuch oppoſite opinions upon what are piracy or murder, and what juſtifiable reſiſtance to tyranny and oppreſſion; when it is ſo extremely difficult, and requires all the acuteneſs, and all the knowledge and experience of the ableſt judges, to draw the line between them: moſt certainly, in this country, our judges ought not to have decided, in caſes that may hereafter be quoted as precedents, without the utmoſt caution and deliberation.

They ſhould have reflected, that in all trials where there was a claim of birth right or citizenſhip, on the part of the accuſed, and where there was not the fulleſt and moſt poſitive proof of his criminality, that it was ſafeſt to try him here.* In this inſtance they ought certainly to have done ſo.

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* The following is taken from the advertiſement of the Britiſh government of Antigua, April 14, 1798, deſcribing Thomas Naſh, with the other men that were on board the Hermione:

"Thomas Naſh, an Iriſhman, one of the forecaſtle men, "about 5 feet 10 inches high, dark complexion, long black "hair, remarkably hairy about the breaſt, arms, &c. had "left the ſhip in Porto Caballo; had entered on board either "an American or Spaniſh trading ſchooner."

In this advertiſement it is remarkable that Thomas Naſh is not called a warrant officer; he is only advertiſed as a common ſeaman, and not charged as one concerned in the

The teſtimony was ſlight and trivial; it was nearly all hearſay; it was indiſpenſable therefore to juſtice, that the priſoner ſhould have had an opportunity of ſending to New-Yorkand Connecticut to prove, if he could his birthright and citizenſhip, in the caſe of ſuch delicate importance, and of ſuch ſlight proof, could the Britiſh government have cenſured the procedure. It was as eaſy for them to ſend their witneſſes here, as to have ſent an armed cutter to carry him away. Juſtice would have been done to all parties, and venerating as their nation is ſaid to do, the trial by jury, a generous and free people would have applauded the reſpect that was paid to it here.

To the ſecond queſtion, it has been already obſerved, that this was a new caſe, in which Congreſs had not legiſlated, and the more that if the judge tho't proper to aſſume the power of deciding he was bound by no particular act or reſtriction, but at liberty to declare the nature of the evidence on which in his opinion ſo important a deciſion ſhould have been made. Suppoſing him, as the diſtrict judge, to have been at all authoriſed to decide, his diſcretionary power certainly would have extended to this; and the point then for conſideration is, that having the power to determine on what evidence ſo important an order ſhould be founded, what ought to have been his conduct, and what the nature of the proof he ſhould have required? My own opinion decidedly is, that he ſhould at leaſt have required ſuch proofs as a grand jury would have thought ſufficient to find a bill. Perhaps he ought to have gone further, and before he conſented to his removal into a foreign country and military tribunal he ſhould have demanded complete proof of his guilt, ſuch as would have induced a petit jury to convict him. But that he ſhould at leaſt have required the proof neceſſary to find a bill no one I think will contend. The enquiry then is what is the proof which the Engliſh law and the laws of his country require to enable a grand jury to find a bill? Although I think there are many defects in the adminiſtration of juſtice, ſuch for inſtance as the dependance of the judges on the crown, from which they receive their appointment, and to whom they may be looking up for further promotion and honor, that of being removable by an addreſs from parlia-

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murder of the officers. But the moſt remarkable thing is this —that while Robbin's certificate ſays he is a man five feet ſix inches high, the other, (that is the Antigua advertiſement,) ſays he is five feet ten inches—Now, four inches is ſo conſpicuous a difference in the height of a man, that ſurely it was of ſufficient conſequence in fixing the identity to have deſerved attention.

ment, which a miniſter can always command, and whoſe views and wiſhes therefore none elſe but an inflexible magiſtrate will dare oppoſe; and particularly in the ſheriffs having the power to ſummons whom they pleaſe as jurors, and to pack them if they think proper: yet there is one part of their ſyſtem which I have always admired, that is, the inſtitution of a Grand Jury.

Their laws have wiſely and humanely conſidered, that next to the diſgrace of being convicted of an infamous offence, is the diſhonour of being charged with one; and therefore, before they would ſubmit a ſubject to the danger and inconvenience of being publicly arraigned, an impartial jury are on their oaths to declare the juſt cauſe for accuſation. We have copied their ſyſtem, and improved upon it. Our juries cannot be packed; they are drawn by lot, and in my judgment criminal trials in this ſtate are as perfect as they can be.

The nature of the evidence which can alone be properly offered to a grand jury, although not entirely concluſive as to the actual guilt of the priſoner, muſt be ſuch as if offered to the petit jury would be legal evidence—Even examinations taken agreeably to the 2d and 3d Philip and Mary, chapter 10, (of force in this ſtate) can only be given in evidence before a jury, when the court is ſatisfied the witneſs is dead, unable to travel, or kept away by the means or procurement of the priſoner. No other examinations can be given, or ought to be received in evidence; and a preſentment founded upon any other, would not be that due preſentment, without which a citizen's life ſhould not be put in danger.

The above opinion is founded on the higheſt law authorities. A learned Engliſh judge, ſpeaking on this ſubject, ſays "The evidence to be given ought to ariſe to a high degree of probability—abſolute poſitive proof if not to be inſiſted upon before a grand jury; AND SLIGHT TRIVIAL SUSPICION AND HEARSAY evidence, are not ſufficient to ground ſuch preſentments upon; for although they are only in the nature of a charge, and do not carry a conviction, yet many inconveniences, as well as expence and danger attend a charge of this ſort, which no ſubject ought to undergo, but upon legal and ſufficient evidence."

This is the law of England, on the ſubject of legal evidence ſufficient to enable a grand jury to find a bill. Our law is taken from, and founded on it; and the public can now judge whether the teſtimony ſubmitted in this caſe, was ſuch as ought, in one of ſo much importance and danger to the priſoner, to have authoriſed his delivery.

Some diſtinctions are attempted to be drawn, reſpecting territory and juriſdiction, the counſel for the priſoner having

contended that the treaty entirely alluded to the peculiar excluſive juriſdiction of each. I have no doubt in my own mind, that Mr. Jay meant no other than the excluſive territorial juriſdiction of each nation. He ſeems to have carefully omitted the word piracy, aware of the difficulty I have before mentioned, of diſtinguiſhing between what may be called *piracy*, or what laudable reſiſtance to violence and oppreſſion. This omiſſion therefore muſt at once convince us, that Mr. Jay could only have meant private acts of premeditated and deliberate murder, ariſing from motives unconnected with any attempts which individuals, coming to be the citizens of this country, might at any time make to free themſelves from the tyranny of impriſonment. It is wonderful, however, to me that Mr. Jay, having ſeen the neceſſity of omitting piracy, did not alſo omit, at leaſt during the exiſtence of the war murder alſo: For in attempts to regain veſſels or eſcape from impreſſment, it is certainly as difficult to diſtinguiſh what is murder, and what is piracy. Upon an occaſion of ſuch importance to the future ſafety of his fellow citizens Mr. Jay certainly ought, and will I ſuppoſe explain, what was his meaning in that article of the treaty. The quotations from Vattel and Rutherford did not apply at all. They are merely meant to refer to the caſes of children born at ſea, to aſcertain, as Vattel does very properly, the right as ſubjects or citizens of the nation to which the veſſel they are born in belongs.

To ſuppoſe that Vattel deſigned to extend the doctrine, ſo far as to mean that the ſhips of a nation are, with reſpect to the ſpace of water they cover on the ocean, its territory as to juriſdiction, as completely as its land or rivers are, is to prove him not only guilty of an inconſiſtency unbecoming ſo well-informed an author, but to make him flatly contradict doctrines expreſſed in other parts of his work. He then contradicts that neutral veſſels do not make free goods; and it is on his authority the Britiſh reſt more than any other, their rights to ſearch neutrals.

Among the reaſons which ſhould make our judges very cautious in deciding againſt the claim of citizenſhip, by perſons aſſuming to be citizens, there is one *peculiar to this country*, and which ſhould be carefully attended to: it is, the difficulty of diſtinguiſhing between the natives of ſome of the middle and ſouthern ſtates, and the natives, of Ireland, Germany, and in ſome inſtances Scotland. The emigrations from thoſe countries to America were formerly very great. Whole counties have been entirely ſettled by them, with ſcarce the intermixture of any other. Their children, hearing nothing but the language of their parents, will as naturally have the Ger-

man, Iriſh, or Scotch accent, as if they were born in Europe. Inſtances of this ſort muſt have occurred to any man, the leaſt acquainted with theſe ſtates. Indeed it is well known, that in ſome places many native Americans, born of German parents, have been met, who could not ſpeak the Engliſh language. If then any of theſe men, born of German parents, have become ſeamen, will it not be impoſſible to diſtinguiſh between them and Europeans.

And can there be a more fallacious mode of determining than from the voice or accent. I know of none more ſo, than that of the countenance ; and to neither ſhould an acute or experienced judge ever attend.

I now come to the policy of the meaſure in the United States. More than any other nation, except Great Britain, ought the privileges of our ſeamen be vigilantly attended to —they are the inſtrument of our commerce, and to them their country muſt look up as the true means of becoming an important naval power— of having the ability to protect and guard their rights, and to inſure to its citizens the bleſſings of peace: they are more expoſed to the attacks and inſolence of powerful and overbearing nations than any other claſs of our citizens, and are therefore more entitled to the care and attention of our public guardians. Poſſeſſing as the United States do, bulky products, every day increaſing, and to export which great quantities of ſhipping and numbers of ſeamen are neceſſary, to what portion of their citizens can they look with more anxiety than to them ? Numerous as they may become within theſe ten years, who knows to what extent the parental and foſtering hand of government may increaſe them within the li e ſucceeding period ? But to effect this we muſt value and cheriſh them. We muſt recollect that they are not our men, but citizens—that they do not, the moment they become impreſſed, by a ſuperior foreign force, loſe their rights, or become loſt to their country. Can it be ſuppoſed, becauſe they are ſeamen, they have no families, no tender connexions, no comforts to endear their homes to them ? Rough and boiſterous as is the element they traverſe, and laborious as are their lives, among none of our citizens are to be found more true independence and generoſity, or more ardent attachment to their country. If then they have thoſe paſſions, that impatience of inſult, that invincible thirſt for revenge, which indignities like impreſſment and tyranny never fail to provoke, are they to be puniſhed for uſing opportunities to exerciſe them ? Are they to ſubmit to the manacle and the laſh, without a murmur, becauſe they fear their country, however poſſeſſing the means, may not have the inclination to protect them ? If ſo, adieu to your commerce and your navy !

Your ſeamen will fly to other governments more ſenſible of their value and more diſpoſed to aſſert and maintain their rights.

I will here take notice of the letter which the judge was ſaid to have received from the ſecretary of ſtate, mentioning, that "the Preſident adviſes and requeſts the delivery of the priſoner," becauſe it has made ſome noiſe, and I do not view it in the ſame light with others; I believe that neither of them meant to influence the opinion of the judge—that they ſuppoſed it was a mere matter of courſe, that there was no doubt as to the identity or country of the priſoner; and they probably never heard of his claim of citizenſhip: that they were anxious, on the part of this government, faithfully to execute the treaty, and that the letter to the judge had another intent. This I really believe to be the caſe; but the noiſe it has made will ſhew the extreme impropriety of the higher executive officers of our government ever touching in the moſt diſtant manner on any ſubject that may come before the judicial. However innocent the intention, as I think it was in this inſtance, it is very apt to give riſe to unfavourable opinions; and none more dangerous to a community can be entertained, than that of a wiſh of the executive to influence the judicial. It weakens the confidence of the public in both; and leſſens the reſpect it is their wiſh to ſhew them. The preſent instance will probably operate to advantage; becauſe it is to be ſuppoſed, that after this our ſecretaries will be careful to avoid ever writing to a judge on any ſubject that may poſſibly come before him.

In one thing I perfectly agree with Mr Bee, and that is, in his avoiding to queſtion the conſtitutionality of the treaty, although I think it unconſtitutional. On no ſubject am I more convinced, than that it is an unſafe and dangerous doctrine in a republic, ever to ſuppoſe that a judge ought to poſſeſs the right of queſtioning or deciding upon the conſtitutionality of treaties or laws, or any act of the legiſlature. It is placing the opinion of an individual, or of two or three, above that of both branches of Congreſs, a doctrine which is not warranted by the conſtitution, and will not I hope long have many advocates in this country.

I ſhall here conclude my remarks on this caſe. They are made in that ſpirit of deference and reſpect, which is intended to avoid giving offence, while it examines with candour the ſubject under diſcuſſion. My earneſt wiſh is to draw the attention of Congreſs to the amendment of the act, and to prove to them the neceſſity of providing in future

againſt the delivery of any fugitives, unleſs a bill is found againſt them by a grand jury; to guard them againſt entering into any articles on this ſubject in other treaties, unleſs they aſſent to it; and particularly to warn them againſt ever forming any agreements, reſpecting fugitives from juſtice, except with nations whoſe citizens poſſeſs the right of trial by jury, and are willing to reciprocate ſo indiſpenſible a proviſion.

A SOUTH-CAROLINA PLANTER.

Charleſton, Aug. 23d, 1799.

LETTER II.

Having lately stated to the Citizens of the United States, my opinion on the case of JONATHAN ROBBINS, *which appeared to me to be of much consequence; I now take the liberty of addressing them on a subject of general concern, on which the rights, the honour, and perhaps the peace of our country may depend.*

Fellow Citizens——

IT is unfortunate for the happineſs of mankind, that ambition, avarice, or revenge have always governed the councils of the moſt powerful nations. In the earlier ages, their ignorance and barbariſm were ſome excuſe; but it is aſtoniſhing that learning and the arts, while they have enlightened and embelliſhed the people who have encouraged them, ſeem not to have ſoftened the ferocious temper of their governments. The ſame thirſt for dominion and revenge, the ſame diſpoſition to controul the weaker nations, prevail as formerly. It is almoſt in vain we ſeek for a ſpot in the civilized world, where the hand of power, or the inſtruments of avarice, will not reach us by their force or influence. The bleſſings of peace and freedom, if ever they are to be found, can only be uninterruptedly enjoyed by a people remote from the buſy and perplexed theatre of Europe, and who either poſſeſs ſufficient force to protect their maritime rights, or are content to relinquiſh them during a conteſt among the greater powers. If they determine upon the firſt, unleſs their force is ſuch as to make their junction with either a ſerious inconvenience to its adverſary, they riſque the evils and calamities of war: if the latter, the loſs to a commercial people is incalculable; every claſs feels it; the merchant, the planter, and mechanic, are alike affected by its conſequences.

I have always conſidered it among the hardſhips of mankind, that no nation, however juſt and impartial in its conduct to others, or diſpoſed ſtrictly to adhere to its duty as a neutral; however innocent in its acts, or uſeful in its commerce to the belligerent powers, is ſuffered to eſcape. From their

recent behaviour it appears as if no desire to exhibit the most marked impartiality, no condescension, no wish to oblige, will save the commerce of this country from their *ravenous grasp*. The conduct of France, in capturing our vessels, no man can palliate; it seems to have originated equally in folly and blindness to their own interests; and all that we can at present hope from their earnest desire to negociate, is, that having seen their error, they will make ample reparation. But what shall we say of the captures of our vessels lately made by the British cruizers in the Bahama and the West India Islands? It has so astonished me, and appears so contrary, either to the policy or interests of *their* government, that it is with difficulty I can believe they are warranted by its orders. They have become however, so numerous and alarming, and amount to so serious a sum, that they loudly call for the interference of *our government*—first, to remonstrate, calmly to enquire into the reasons, and, still presenting with sincerity the *olive branch*, to ask for redress. I know too well the value of peace to my country, to wish it risked for trifling causes; growing as we are in wealth, in population, and in consequence, its continuance to her citizens is, of all things, the most valuable, except their national honor. This however, must at any rate be preserved. With states as with individuals, to punish the first insult is of infinite importance. Our government, with respect to France, has properly chosen this conduct, and it would be as impolitic as *dishonourable* for her to deviate from it with regard to Great-Britain. Far am I from hoping that we shall be ever driven to the painful necessity. We trust, that a nation which speaks so loudly of her justice, a nation which declares she has entered into the contest with France with no other view, but to secure the order and peace of Europe, only wants to be informed upon the subject that the moment she knows her cruizers have violated the rights of a friendly and unoffending power, she will not only make ample reparation for our losses, but punish the aggression of her officers in an exemplary manner.

Understanding, as she well does, her interest, she must know that the conduct of the American government towards her, has not only been strictly just and impartial, but that they have been charged by other nations with being *too condescending*. At no period, more than the present, must she feel the importance of our commerce. Possessing as we do, articles of the first necessity, and valuable materials for her manufactures, and unbounded in our use of them, where has Great Britain so excellent a customer, or one whose

trade ſhe ſhould more encourage and protect? One from whom ſo much is to be made and ſo little apprehended? We have no formidable army or navy to threaten conqueſts, or invade her maritime rights—we have more territory than we can ſettle for ages; and our remote ſituation, the nature of our government, and the temper of our citizens, forbid the idea of our *even wiſhing* to acquire diſtant poſſeſſions. Throwing therefore juſtice, and the rights of neutrals out of view, ſurely, a ſafe and extenſive intercourſe with ſuch a people, muſt be of infinitely more value to Great-Britain than any temporary advantage which may accrue from ſuffering her cruizers to enrich a few *licentious individuals*; at the expence of our friendſhip and connection.

However fallacious the idea has hitherto been, I ſtill entertain the hope, that the nations which have injured our commerce, will be convinced that their intereſt, as well as their honor, require a different behaviour: that much greater and more ſolid advantages will ariſe from an open and fair trade, an honorable and juſt conduct, than the little degrading ſyſtem of private plunder; that the capture of harmleſs and unarmed neutrals, and the ruin of innocent and unoffending families, is unworthy the policy of a great nation: that although they may enrich a few individuals, they never increaſe the public wealth: that the benefits to be derived from them are, in a national point of view, at any rate ſmall; but that when compared with the ingratitude, and too frequently perjury they occaſion in unprincipled mariners, the corruption which it is ſaid they ſometimes carry upon the bench of juſtice, and the ſpirit of licentiouſneſs and robbery they introduce, they are trifling indeed. It is therefore to awaken them to a ſenſe of their true intereſt, to allay the ſpirit of retaliation and revenge, which is rapidly growing in every part of the union, and before it is too late, to open the way to ſuch explanations as can alone preſerve to both the bleſſings of peace, that theſe remarks are ſubmitted with the beſt and moſt amicable intentions.

When a nation cenſures the acts, or complains of the injuſtice of another, it is proper for their government, or its citizens, to ſhew, not only that they have been *juſt and upright themſelves*, but that the injuries they have ſuſtained have been produced by unjuſt and illegal meaſures on the part of thoſe they complain of, and ſuch as are not warranted by the law of nations, or the treaties exiſting between them.

The ſubject, therefore, I intend to diſcuſs in the preſent number, is the immenſe amount of American veſſels and

property taken by the Britiſh cruizers and carried into the Bahama and Weſt-India Iſlands, and other parts of their dominions, and the reaſons given by their judges for their condemnation.

The captures made by the Britiſh cruizers, have for a conſiderable time been extremely ruinous to the American commerce. Their depredations, which they have never ceaſed, even ſince the formation of the treaty, have lately become ſo numerous and important, as to oblige the merchants to look to their own government for redreſs and protection. Many of them, to my knowlege, are enquiring the beſt means of applying for this redreſs, and they will no doubt be heard with the attention due to ſo important a claſs of our citizens. The real merchants, the men who trade on their own capitals, and are not the factors or agents of others, are of ſuch conſequence to our commerce and revenue, that it is impoſſible to ſeparate their intereſts from that of the owners of the ſoil, or indeed from the government itſelf: they are ſo intimately connected, as in a great meaſure to depend upon each other. The value of our exports depends upon the capitals, and the number of merchants who are to purchaſe them; the competition they create, and the ſafety with which our produce can be ſhipped. A great part of our revenue depends upon the ſame circumſtances: for without ſafety to the tranſportation, and proper prices for our exports, our importations muſt decreaſe and the revenue be leſſened. Hence ariſes the unavoidable neceſſity of our government interfering to protect their merchants, whenever they find their property expoſed to ſeizures and condemnations unwarranted by the law of nations. To ſhew this will be my endeavour. I ſhall not apply to the paſſions, but to the judgments of my readers. I have already ſaid it is equally my intention and wiſh to allay, and not to provoke; to produce redreſs by amicable negociation, to ſmoothe the way to that uninterrupted commerce which I well know to be among the greateſt bleſſings either nation can enjoy or ſecure.

Amidſt the variety of captures which have been lately made the number condemned in the month of Auguſt at New-Providence is the moſt formidable we have ſeen; it amounts to a ſum little ſhort of 300,000 dollars. If any thing like the ſame number of captures is made in one month, and carried into and condemned in the ports of Jamaica, Antigua, Barbadoes, Martinico, and the other Britiſh Iſlands in the Weſt-Indies, and at Halifax, and they capture and condemn, for the ſame reaſons, all our veſſels they

may meet going to any of the ports in Europe of the powers at war with them, the American commerce, and so much of its revenue as is dependent upon it, is in a fair way of annihilation; and no prudent people will censure the interference that is claimed.

Out of the numerous condemnations which have been made by the British court of vice-admiralty, I shall select the following, as they contain their own statements, with the reasons of the judge.

MACKAY AND NICKS,

VERSUS

The Polacre Ship Adams and Cargo.

The Polacre ship Adams was captured on a voyage from New-York to New-Orleans, and was condemned with her cargo as prize to the captors.

It appeared, that the owner, who was on board at the time of capture, was born in Ireland, had removed from thence and settled in the United States of America, in 1792, and had been admitted a citizen in due form of law, in March, 1796.

Condemnation was urged on three grounds.

1st. That the claimant was not an American citizen, but a British subject.

2d. That the vessel was an adopted vessel of the enemy.

And lastly, that the property was enemy's, and the claimant only covered it in his name.

The judge, in his decrees confined himself to the consideration of the first point, and declared that the claimant being a natural born subject of his majesty, and not having been admitted a citizen of the United States of America, until March, 1796, could not be considered, with respect to Great Britain, as a citizen of the United States, so as to entitle him to trade with the enemies of the king.

THE KING,

VERSUS

The Brigantine Felicity and Cargo.

The Felicity and cargo were owned by an American citizen, and were arrested on a voyage from New-York to Havanna.

A part of the cargo turning out, upon search, to be contraband of war, both vessel and cargo were condemned as lawful prize.

It reſults from theſe ſtatements, that a Britiſh ſubject, who ſince the commencement of the preſent hoſtilities, that is February, 1793, has obtained letters of citizenſhip, or in any manner been admitted a ſubject or citizen of a neutral power, trades with any of the nations at war with G. Britain, he is liable to have his property engaged in ſuch commerce ſeized and condemned.

That contraband goods found on board a veſſel, make all other articles in the ſame veſſel belonging to the owner liable to confiſcation; and that contraband articles, if ſhipped by the owner of the veſſel in which they are found, ſubject the veſſel to condemnation.

In diſcuſſing the opinions and pretences upon which the commerce of our country is ſo much plundered at preſent, and on which its future ſafety ſo eſſentially depends, I ſhall *firſt*, conſider the queſtion "*respecting the right of a citizen to leave his country and change his allegiance, and what is the law of nations on this subjcet.* No queſtion is more celebrated in the ancient and modern world than this. Among the ancients, there was no doubt a citizen had a right to leave his country whenever he thought proper.—As Rome, from her power and influence, and her knowlege of public affairs, unqueſtionably dictated and fixed the general opinion, I ſhall conſider it neceſſary, with reſpect to the ſentiments of the ancients, to give the uſage of the ſole miſtreſs of the world as collected from Cicero, the moſt learned and eloquent of her ſtateſmen. He ſays, "that by the conſtitution of the Roman commonwealth, no citizen could be forced *to leave the commonwealth;* or, if he pleaſed, *not to leave it*, when he was made member of another he preferred to it. That a little before his remembrance ſeveral citizens of Rome men of credit and fortune, voluntarily left that, and ſettled in other commonwealths—'*and the way*,' ſays he, '*is open from every state to ours, and from ours to every state.*"

This was the opinion of the Roman Republic, and of its luminary, Cicero—than whom the world has not ſeen a greater man, either as a writer, or an orator.

In examining the leading modern authors on the law of nations, we ſhall find a general concurrence, at leaſt ſo far as to eſtabliſh the opinions neceſſary to my preſent purpoſe.

Grotius, in treating of this ſubject, ſays, "Nor are we ſpeaking of going out of one part of the ſtate into another part of the ſame; but out of the whole ſtate or extent of the ſovereign. That we ought not to go out in troops or large companies, is ſufficiently evident from the end and

and deſign of civil ſociety, which could not ſubſiſt if ſuch permiſſion was granted; and in things of a moral nature, what is neceſſary to obtain the end, has the force of a law; but the caſe ſeems quite different when a ſingle perſon leaves his country, as it is one thing to draw water out of a river, and another thing to divert the courſe of a part of that river. Tryphonius expreſsly ſays that every man has a right to chooſe the ſtate of which he has a mind to be a member. And Cicero, in his plea for Balbus, commends that privilege which every one has, of *not staying in any state against his inclination*; and he calls the power of either *keeping or parting with one's right, the foundation of liberty.*

Vattel, in his diſſertation on the ſame ſubject, allows, that many diſtinctions are neceſſary in order to give a ſolution to the queſtion. "*Whether a man may quit his country, or the "society of which he is a member?*" 1ſt. The children have a natural attachment to the ſociety in which they are born. Being under the neceſſity of acknowledging the protection it has granted to their fathers, they are obliged to it in a great meaſure for their birth and education; they ought then to love it, expreſs a juſt gratitude, and return the benefits they have received. *But every man born free, the son of a citizen arrived at years of discretion, may examine, whether it be convenient for him to join in the society for which he was destined by birth.* If he finds that it will be no advantage to remain in it, he is at liberty to leave it, making a return for what it has done in his favor, and preſerving, as much as his new engagement will allow him, the ſentiments of love and gratitude towards it.

In another place Vattel ſays, "a citizen may quit the ſtate of which he is a member, *provided* it be not at ſuch a conjuncture when he cannot abandon it without doing it a remarkable prejudice." And in a third, "every man has a right to quit his country, in order to ſettle in another, when, by that ſtep, he does not expoſe the welfare of his country."

The reſult of theſe opinions is, that among the ancients the right of a citizen to quit his country when he pleaſed *was unqueſtioned.* That among the moderns the right is admitted at all times, except at a conjuncture when, "he cannot abandon it without doing it *a remarkable prejudice*;" that is, in time of *extreme danger*, when an enemy has actually invaded the country, or is about immediately to do ſo.

This is the utmoſt latitude the meaning of the words; "*without remarkable prejudice,*" will admit. It is allowed,

that the citizens who in this ſituation abandon their country, endeavoring to ſecure themſelves, inſtead of defending it, manifeſtly violate the pact of ſociety, and are deſerters which a ſtate has a right to puniſh; but it muſt be in caſes of *extreme necessity and danger*; in no other, by the law of nations, is the reſtraint admitted.

When a country is engaged, merely in a naval war, or in *distant expeditions*, and no danger threatened at home, her ſubjects or citizens have then as perfect a right to expatriate themſelves as at any other. England has been more than one half of the laſt hundred years at war, and not above once or twice during that period has ſhe been attacked at home, and that by her own ſubjects, in attempting to place another monarch on the throne; theſe inſurrections laſted but a ſhort time, and for the remainder of the century the country was in ſecurity and tranquillity.

If, therefore, the opinion was to prevail, that, during any war, whether naval or otherwiſe, or however *distant in its operations*, her ſubjects could not change their allegiance, notwithſtanding their affairs, their neceſſities, or even *their healths*, might require, being for half a century, impriſoned and deprived of their rights—confined like plants to the ſpot where they happened accidently to ſpring, and compelled to vegetate there at the will of their ſovereign.

It is ſaid that the law of England does not permit a ſubject ever to change his allegiance. There is, I am informed, a ſimilar regulation in Ruſſia. I have proved the law of nations allows it in all caſes, except in times of extreme danger and difficulty. It is neceſſary for every independent people to have laws or regulations of their own, reſpecting the admiſſion of citizens; in determining upon theſe, it would be improper for them to be governed by the laws or opinions of particular nations. Theſe vary ſo much, that it would be impoſſible to frame any ſyſtem that would ſuit the whole. The law of nations being the antient and eſtabliſhed uſage, and paramount to all local laws, was the ſafeſt and moſt proper criterion. It knows no diſtinction, and acts upon general principles; it teaches us that all men have a natural right, except in the caſes alluded to, to change their reſidence and leave their country for another; that, as Cicero ſays, *the way lies open to all, and that the keeping or parting with this right is the foundation of liberty*. It conſiders it as a cruel and unjuſtifiable reſtraint, that men ſhould be ſo much ſuppoſed the property of the ſovereign, in whoſe dominions they happen to be born, as to be obliged either to live there conſtantly, or if they emigrate, that the

duties or obligations of ſubjects ſhould ſtill follow them; that although they might live in other countries, it would be under the *degrading disability* of ſtill being conſidered as ſubjects of the power they had left, and that they therefore would be incapable of mixing in the councils of the country to which they had removed. *Despising such a state of bendage*, the law of nations gives to every one, as it ought, the right of living where he thinks proper; inſtead of being fixed to one ſpot, of becoming, if he pleaſes, a citizen of the world. Nor is this a new doctrine: it is as old as the Athenian Republic. "I would rather" ſays *Socrates*, "*be a citizen of the world, than of any particular comm nwealth,*" Nay, ſo fixed was this opinion among the ancients on the right of a citizen to leave his country, that in diſcuſſing it, *Demaratus exclaimed, he would prefer liberty in banishment, to servitude at home.* The opinions of all the beſt modern writers are, as I have quoted, that, except in times of extreme danger, a citizen has a right to change his ſituation and reſidence, and it is on this opinion that the United States have founded their law. Conſidering their habits and principles, it was impoſſible to frame it upon any other. Every American citizen is born free, and glories in it with reaſon. The firſt leſſon he receives from his father, and the firſt he tranſmits to his ſon, is, that independence is his inheritance; he is proud of being himſelf, capable of thinking, feeling, and acting for himſelf; he can have no idea of being confined to one country, or one allegiance, if he thinks proper to change them. In their act, therefore, it was impoſſible for them to make any diſtinction or to pay any attention to the local laws of particular ſtates. They have been obliged from circumſtances to vary the time neceſſary to entitle an applicant to citizenſhip; the reſidence previouſly neceſſary, in the year 1793, was two years; ſo that all the citizens made in that year, muſt have been in this country *two years* before. Many of them have been here a much longer time, as it is well known that there are at this moment a gerat number of the natives of Britain, reſident in the United States, who have been ſo long before 1793, and who ſtill continue ſubjects of that power. All thoſe who became citizens in 1793 or 1794, muſt have, from the law admitting them to citizenſhip, been here ſo long as to prove at once that they left their country before the war, and in a time of profound peace; and yet by the decree of the judge of New Providence, they are not to be conſidered as citizens, and are liable, if they attempt to trade uuder the American flag, to have their property engaged in ſuch com-

merce ſeized and condemned. I will aſk, under what pretence, under what colour of law, or of reaſon, can theſe condemnations take place or be juſtified?

It is univerſally admitted by all the writers, ancient and modern, that in time of profound peace a man has a right to leave his country, I have ſhewn, from the reſidence previouſly neceſſary to qualify for citizenſhip, all thoſe who were admitted in 1793, and 1794, muſt have left Great-Britain when at peace, and therefore, with reſpect to thoſe, there can be no doubt, among well informed judges, that the Providence judge has *violated our neutral rights*, and that it is the duty of our government to ſeek redreſs. I am not without hopes that the policy of amicably granting it, will be ſeen and purſued. It might alſo lead to explanations on the ſubject in general; for under the law of nations, I hold it to be a clear and undoubted right, the ſubject, or citizen of every power poſſeſſes, to change his reſidence and allegiance, except when his country is actually invaded by a foreign force, or is in imminent danger of being ſo, or has a conteſt amounting to war raging within it; that it is a privilege founded in the law of nations and the reaſon of things; and that the laws of Great-Britain, Ruſſia, and the other countries which differ, are unnatural infringements of a right their Creator muſt have intended every human being to poſſeſs: that the United States, having acted upon this right, it is their duty to protect the lawful commerce of thoſe they have created citizens; that otherwiſe *their grant* of citizenſhip is a *public deception*, ruinous to the intereſts of thoſe their laws upon this ſubject have entrapped, and unworthy the juſtice and honor of the American nation.

I come now ſecondly to conſider the determination given by the judge, reſpecting the condemnation of all the goods on board any veſſel, belonging to the ſame owner, who may have ſhipped any contraband goods, even of the ſmalleſt value; and that contraband goods, ſhipped by the owner of the veſſel, renders ſuch veſſel liable to condemnation.

The property of American citizens depending upon this conſtruction, being to a very great amount, and as it may hereafter materially affect them, I have conſidered the ſubject with all the care and attention I could; I have ſearched into every authority within my reach; and, after the moſt deliberate and impartial examination, do not heſitate to pronounce it a moſt unjuſt and illegal deciſion—one as unwarranted by the law of nations, as it is by the laws of Eng-

land, or the deciſions and opinions of their ableſt ſtateſmen and judges.

As the queſtion is of infinite importance, I truſt my countrymen will not conſider me as unreaſonably treſpaſſing upon their patience in making the following obſervations.

It is agreed by all writers, that ſhips of war, or privateers, are not to attempt *any thing againſt the law of nations*; ——they are not, by aſſaulting within the port of a friend, to diſturb the peace of the place, for it muſt be inviolably preſerved; they are carefully to attend to the leagues of their *allies*, *neuters*, *and friends*, according to their various and ſeveral treaties; and therefore, by a marine treaty, between Charles II. and the ſtates of Holland, the commanders of privateers are to give ſecurity for their behaviour, exactly in the manner of the treaty of Great Britain with the United States; indeed, it appears to me that the whole of the 19th article of that treaty, is copied nearly verbatim from that of 1674.

By other articles in the ſaid treaty, if torture, cruelty, or any barbarous uſage after capture, be done to the perſons taken in the prize, the ſame ſhall diſcharge ſaid prize although ſhe was lawful, and the captains ſhall loſe their commiſſions, and they, and the offenders, be ſubject to puniſhment. This agreement between the Engliſh and the Dutch ought to be a ſtandard to all nations; and by the treaty of Utrecht, there is an article with France to the ſame purpoſe.

Ships carrying powder, ſhot, guns, ſwords, and other warlike inſtruments for ſea or land, bound for an enemy from a neuter nation, or ſtate, in amity with both the belligerent powers, ſhall be taken as prize, provided they are wholly laden with them. Money, proviſions, &c. can only be interrupted in time of extreme neceſſity, when the war is ſo ſevere that a prince cannot poſſibly defend himſelf, or damage the enemy, *without intercepting ſuch things*; and and it is now agreed and ſettled by numerous treaties, that thoſe things which may be uſed out of war, or in war, (except ſhips) ſhall not be called prohibited nor liable to condemnation; unleſs carried to places beſieged; and it is univerſally conſidered as a rule not to be queſtioned, that goods made uſe of for pleaſure and luxury only, are free in neutral ſhips. But the part of the law of nations eſtabliſhed on this ſubject, which claims peculiarly the attention of every American citizen, is, "that in caſe part of the lading of a ſhip is prohibited or contraband, and the other

part merely for pleaſure, the goods prohibited only, ſhall be judged prize, and the ſhip and the remainder of the cargo be diſcharged, which may proceed in the voyage on delivering up the other goods, without being even brought into port. But if a ſhip be *wholly laden* with contraband goods, then, and only then, both the ſhip and the goods may be made prize."

Theſe are the ſettled and eſtabliſhed rules which govern all well-informed and impartial tribunals, in deciding upon prizes; and I ſhall examine how far they are conſiſtent with the treaty made by Great-Britain with the United States, and whether that treaty has not, with reſpect to contraband, expreſsly ſtipulated that a conduct ſhall be obſerved by the Britiſh tribunals exactly the reverſe of the decrees of the Naſſau judge."

The 17th article ſtipulates, that if any veſſels are detained on ſuſpicion of having enemy's property, or contraband goods on board, they ſhall be carried to the neareſt port; and that which belongs to an enemy ſhall be made prize of only, and the veſſel ſhall be immediately at liberty to proceed with the remainder. The 18th article declares what ſhall be contraband, adding to the uſual liſt, timber for ſhip building, tar, copper in ſheet, ſails, hemp, and cordage, and generally whatever may ſerve for equipping veſſels, except unwrought iron, and fir planks. The ſame article expreſsly declares, that whenever proviſions, or other articles, not generally contraband, may by the exiſting law of nations be conſidered ſo and be ſeized, the ſame ſhall not be confiſcated, but the owners ſhall be ſpeedily and completely indemnified, and the captors, or, in their default, the government under whoſe authority they act ſhall make full compenſation, adding a reaſonable mercantile profit, and freight and demurrage, incident to ſuch detention.

Although I have ever diſapproved of theſe articles in the Britiſh treaty, and clearly foreſaw the evils which have ariſen from our giving a colour to the Britiſh cruiſers to take and detain our veſſels on any pretence, the extending the liſt of articles declared contraband of war, and yielding to their ſeizing our proviſion ſhips; yet, upon comparing theſe regulations with the decrees and condemnations of the Judge at Naſſau, we are aſtoniſhed beyond expreſſion, that ſo open a violation of juſtice, of the laws of nations, and of exiſting treaties, ſhould be attempted by any judge acting under the authority of a nation which boaſts ſo much of the purity and impartiality of her tribunals.

No one can now for a moment doubt, that not only by the laws of nations, the laws and adjucations of England and her courts, but by the expreſs proviſions of their treaty with the United States, the Britiſh cruiſers are bound not to touch any part of an American cargo, except ſuch as is enemy's property, or undoubtedly contraband according to the laws of nations: that it is ſtipulated in the moſt poſitive manner, in the caſe of proviſions and articles not generally contraband, but which may by the exiſting law of nations be conſidered ſo, and be for that reaſon carried into port, that they ſhall not be confiſcated or condemned; but that the owners thereof ſhall be completely indemnified, and with a reaſonable mercantile profit. The judge therefore at Naſſau, or any Engliſh judge, was bound by the moſt powerful reaſons to reſpect all American property, except ammunition or implements of war. The treaty expreſsly forbids their condemning any other part of it; and it was his duty in all the caſes mentioned, only to have confiſcated the military ſtores, or what was clearly proved to be enemy's property. As a judge, inſtead of tarniſhing, he ſhould have conſidered himſelf the guardian of the public honor of his government, the preſerver of her treaties, and the protecter of thoſe rights ſhe had ſolemnly promiſed to maintain inviolate towards a neutral and friendly power.

I had proceeded thus far in the preſent number, when I received information that the ſpoliations upon our trade, and the number of the veſſels carried into Kingſton in Jamaica, exceeded thoſe carried into New-Providence; and that the liſt expected from Martinico, Mountſerrat, St. Kitt's, and Tortola, were comparitively large. In this diſtreſſing dilemma, it becomes every friend to his country to unite in endeavoring to obtain the fulleſt information. The merchants, who muſt be the moſt intereſted, are earneſtly called upon, and requeſted to furniſh particular and authentic documents of their reſpective loſſes; it would perhaps be beſt to ſend duplicates, tranſmitting one copy to the ſecretary of ſtate's office, and the other to one of their repreſentatives in congreſs. This ſhould be done throughout *all the ports of the United States.* No time is to be loſt; the meeting of Congreſs approaches, and they ſhould have the fulleſt information. The merchants ſhould recollect, that the reaſons given by the judge, and which we are to preſume are the reaſons which govern all the Britiſh courts of admiralty in the Weſt-Indies, go almoſt to the annihilation of our commerce, particularly in the Weſt-Indies. That which reſpects Britiſh ſubjects made citizens ſince February,

1793, is highly important; but the doctrine reſpecting contraband, is abſolutely the moſt ruinous and illegal that they could have deviſed.

We know that the liſt of contraband articles, as eſtabliſhed by the law of nations, is frequently altered by agreement between different powers. I have examined a variety of treaties in which theſe articles have been altered, ſome treaties leſſening and others encreaſing them. The treaty between Great Britain and the United States, enlarges them very much; there is ſcarcely one between commercial nations in which it is not an important article. To know therefore exactly the ſtate of contraband articles, as they ſtand between different countries, requires reſearches and examinations to which none but men in the habits of public buſineſs are much accuſtomed. It is not to be expected that every merchant, or ſupercargo, or maſter of a veſſel, is a man of letters; that he is to be acquainted with the law of nations, or to underſtand in what particular ſituation parts of their cargoes may become contraband. Nine tenths of the articles ſhipped by a merchant may be proper, and the remainder may, through ignorance be contraband; nay, a ſingle article may have inadvertently been ſhipped; and for this trifling miſtake, is he to forfeit perhaps his all? Can this be juſt, or is it conſonant to thoſe principles on which the laws that govern ſtates in their intercourſe with each other, are founded? The caſes which ſometimes occur on the ſubject of what is, or what is not, under exiſting circumſtances, contraband, require the niceſt diſtinctions; the moſt able and experienced judges have often differed upon them: how much more reaſonable then *is that law*, which does not expect from every one concerned in trade an accurate knowledge upon the ſubject, and only forfeits the article that is contraband? I will ſtill indulge the hope that upon a ſerious and attentive conſideration of the ſubject, Great-Britain will find it her true policy to remove and correct the injuries which determinations like theſe produce. It muſt always be her intereſt to protect the juſt rights of commerce, to ſupport thoſe principles which promote the labors of mankind, ſince ſhe herſelf, like the United States, can only be great from the virtuous induſtry of her inhabitants.

The project of having alone the empire of the ſea, and not only monopolizing, but treating all kinds of commerce as ſhe pleaſes, is not leſs chimerical, or leſs deſtructive than that of univerſal dominion on the continent. It is to be wiſhed, for the happineſs of mankind, the Engliſh were

convinced of this truth, before they learn it by their own experience. France has already repeated many times, that it was neceſſary to eſtabliſh a balance of power at ſea, and has yet perſuaded nobody, becauſe they ſuppoſed ſhe wiſhed to be the ruling power, and, by leſſening the force of the Engliſh, more ſurely to give laws to the continent: but if England continues to abuſe its ſtrength and exerciſe a tyranny on commerce, all the other ſtates, that have ſhips and ſeamen, will be compelled to unite againſt her and aſſert their rights.

The United States are probably ſoon to take a new station. They are about to enter upon a negociation with France; and the preſent uncertain ſtate of their commerce with Great Britain, the difficulties which have ariſen reſpecting the immenſe claims, amounting to millions, made by Britiſh ſubjects under Mr. Jay's treaty, and the receſſion of the American commiſſioners, muſt open a negociation with that power; one in which every interfering claim, whether of commerce or otherwiſe, can be amicably adjuſted. Thus will all the important relations which this country has with the two moſt powerful maritime ſtates, and thoſe with whom ſhe has the greateſt intercourſe, be again ſubmitted to negociation. It will be opened, too, at a time when, being more experienced, and better underſtanding her true intereſts, ſhe will probably have it in her power to form treaties upon principles which may remove the objections to the preſent, and poſſibly reconcile and conciliate all parties.

That all theſe difficulties may thus end in producing the bleſſings of a free commerce, and domeſtic harmony, muſt be the wiſh of every friend to his country.

I will here conclude, with indulging the hope, that thoſe who may direct our affairs, or repreſent our citizens in the councils of the union, will upon every occaſion ſuffer themſelves to be alone governed by the principles of impartial juſtice to all nations, by an upright and ſteady attention to the true intereſts of their own country—that they will encounter no improper partialities for ſome nations, and diſlike to others; that they will by no means permit their public opinions to be influenced by the hope or expectation of what might happen in Europe; that of all things the moſt changeable and uncertain; that ſo much depends upon ſucceſs, or misfortune in war, nay, frequently upon the event of a ſingle battle, upon the ability and fidelity of a general, the zeal of his troops, or the enthuſiaſm of a

people, that it was almoſt impoſſible in one year to ſay what may be the ſtate of things the next.

The termination of the war is no doubt of the higheſt importance to the civilized world; it is difficult to ſay how or when it will end. At preſent it is our duty to guard our rights, and be juſt and impartial in our public conduct. The event we muſt leave to him, in whoſe hands is the fate of nations, and under whoſe protection we have hitherto been a free and fortunate people.

A SOUTH-CAROLINA PLANTER.

Charleston, Oct. 3. 1799.

LETTER III.

My last addresses to "The Citizens of the United States," *were on the subjects of the case of Jonathan Robbins, and the captures of our vessels by the British Cruizers. The following is on the Mutual Claims of the two nations, the secession of their commissioners, and the eventful state to which things are reduced: a subject which will no doubt claim the serious attention of every friend to the rights and peace of his country.*

FELLOW CITIZENS.——

WHEN a difference respecting the construction of treaties is about to take place, between nations long in the habits of intimacy, and an important commerce with each other, it is of infinite consequence to a government, or its citizens, to be able to shew that they *are not in the wrong*: that the construction they insist upon is a proper one, and that they are governed, not only by the principles of the most exact justice, but also of the most honourable and liberal policy: that disdaining to be bound by narrow and rigid limits, they are willing to give to the instrument every latitude its intention will justify. But that the points contended by their opponents, being neither within its letter or meaning, they are obliged to resist them for reasons which, with deference and respect, they submit to their countrymen, and to an enlightened and impartial world.

It will be always painful for a people so unambitious and so little disposed to controversy as the United States, to contend with any nation upon points on which they could with truth be charged with the smallest departure from the most exact and honourable justice; or with not complying with stipulations solemnly entered into and ratified by their government.

The relative situation of Great-Britain and the United States is such, as to make this difference peculiarly disagreeable: they are so connected by commerce, and their trade

is so reciprocally beneficial; that except the preservation of their national honor, I know no object that is to be put in competition with it. There are few countries whose situations enable them mutually to extend and receive so many advantages, and certainly few who ought to have less apprehensions of danger from each other. The benefits to be derived to each from peace and an undisturbed commerce, are incalculable. To blessings like these, all subordinate considerations should yield. Separated as they are by an ocean of great extent, and differing in climate and situation, where I will ask again, has Great-Britain so excellent a customer? They, a great manufacturing people, we, a nation of planters, sending them our valuable materials and productions, and taking from them in return their manufactures and superfluities. Her minister has often boasted, that in losing America they lost nothing but territory: that our trade with Great Britain was greater than ever: and a late writer confesses that in purchasing six millions annually of her manufactures, we were the best foreign customers the English had. How important an object then is it to them to secure so great and so growing a purchaser? one not much inferior to them at present in population, and whose unparalleled increase will make them every day a better?

While possessed of so much more territory than we can people, it must for many years be the interest of the United States to be a land of husbandmen: they can purchase cheaper than they can manufacture, and the rapid extension of their agriculture will prove the most solid means of promoting the strength and riches, and protecting the morals of their citizens.

On every ground of policy as well as humanity, in which the situation of the two countries can be viewed, it is so much their interest to be in peace with each other, that it becomes all their true friends to interpose their best services, and by moderation and conciliatory measures prevent the most dreadful calamity that can happen to either.

I well know I have been frequently accused of improper partiality to one nation, and undeserved enmity to another. Convinced of the purity of my motives, and that the opinions and measures I have advocated, were founded in a wish to promote the real interests of our country, I have long been accustomed to despise both public and private calumny. Believing truth and reason to be on my side, I have always used them as my shield against the

ſhafts of error and deception. Well knowing the conſequences of war, I have exerted myſelf as much as my feeble influence would permit, to aſſiſt in averting its evils from our citizens, and in doing ſo have differed from many whoſe ſentiments I ſhall reſpect, Conſiſtent as I truſt my public opinions have always been, I ſhall upon the preſent occaſion uſe the ſame unwearied diligence to arrest the hand of violence, and prove to both people the error of that opinion which could prefer hostility to peace, or force to temperate diſcuſſion.

It is the character of monarchies to delight in war: the pride of conquest and deſire to rule invariably govern their councils. To love peace and cheriſh all its milder arts, ſhould be the true policy of every wiſe republic: for none but the most important reaſons ought they to fly to arms. It is only in the last reſort it ever ſhould be thought of. When moderation and diſcuſſion have been exhausted, and every honorable means to prevent a difference have failed; when points unfounded in justice and ruinous in the extreme have been urged, and nothing ſhort of an unconditional compliance will be accepted: then, but not until then, can a republic be justified in committing their interests to the uncertain events of war: *then*, and probably not before, will all their citizens be convinced of the moderation and equity of their government, and be ready to ſupport and defend its rights

Theſe reflections have been occaſioned by the awful and alarming ſtate to which things are reduced between Great Britain and the United States. Finding that our citizens ſeem not to be appriſed of their ſituation, and anxious that they ſhould be prepared for an event, which in my judgment nothing but the utmoſt prudence and forbearance on both ſides will prevent; I conſider it as my duty to inform them, that in drawing for the fifth commiſſioner under the 6th article of the treaty with Great-Britain, the Britiſh commiſſioners have been ſucceſsful: that in conſequence of obtaining this decided majority at the board, ſuch principles have been eſtabliſhed by them as have opened a door to claims amounting to many millions—claims ſo great indeed, and the priciples ſo ruinous to the intereſts of the United States, and ſo clearly not within the meaning of the treaty, that the American commiſſioners have *ſeceded* from the board. It is mentioned in the papers, that one of the Britiſh commiſſioners has returned to England; and it is ſaid with great appearance of truth, that the commiſſioners in London under

the 7th article for deciding upon the caſes of the veſſels captured by the Britiſh cruiſers, in 1793 and 1794, have alſo ſeceded;* if they have not already, as ſoon as they hear of the ſeceſſion of the American commiſſioners in Philadelphia, there is no doubt they will retire as a matter of courſe. The increaſe of the captures of our veſſels by their cruiſers, I ſtated in my laſt addreſs to you; and our ſubſequent accounts do not warrant a belief that they will be leſſened. Thus are things returned to the ſituation in which they were in the ſpring of 1794, when the then Preſident (General Waſhington) ſent Mr. Jay as envoy extraordinary to London to adjuſt them; at leaſt ſo far as reſpects Britiſh claims for debts, claims for captures of American veſſels, and *the violated honor of our government.*

It is true the Britiſh government are ſince in poſſeſſion of a treaty, under which they have attempted to ſupport theſe claims, but as they are ruinous and totally inadmiſſible on our part, the exiſtence of the treaty only contributes to increaſe the delicacy and difficulty of our ſituation, and to make the adjuſtment of differences leſs eaſy.

In order to give a correct view of this ſubject, it will be neceſſary to ſtate the 6th article of the treaty, which is in theſe words:

"Art. VI. Whereas it is alledged by divers Britiſh merchants and others his majeſty's ſubjects, that debts to a conſiderable amount, which were *bona fide* contracted before the peace, ſtill remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments ſince the peace, not only the full recovery of the ſaid debts has been delayed, but alſo the value and ſecurity thereof have been in ſeveral inſtances impaired and leſſened, ſo that by the ordinary courſe of judicial proceedings, the Britiſh creditors cannot now obtain, and actually have and receive full and adequate compenſation for the loſſes and damages which they have thereby ſuſtained: it is agreed, that in all ſuch caſes where full compenſation for ſuch loſſes and damages cannot, for whatever reaſon be actually obtained, had and received by the ſaid creditors in the ordinary courſe of juſtice, the United States will make full and complete compenſation for the ſame to the ſaid creditors: but it is diſtinctly underſtood, that this proviſion is to extend to ſuch loſſes only as have

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* *See the Preſident's Speech, opening of firſt ſeſſion of ſixth Congreſs*, 1799.

been occaſioned by the lawful impediments aforeſaid, and is not to extend to loſſes occaſioned by ſuch inſolvency of the debtors, or other cauſe as would equally have operated to produce ſuch loſs, if the ſaid impediments had not exiſted, nor to ſuch loſſes or damages as have been occaſioned by the manifeſt delay or negligence, or wilful omiſſion of the claimant.

"For the purpoſe of aſcertaining the amount of any ſuch loſſes and damages, five commiſſioners ſhall be appointed, and authorized to meet, and act in the manner following, viz. Two of them ſhall be appointed by his majeſty, two of them by the Preſident of the United States by and with the advice and conſent of the Senate thereof, and the fifth by the unanimous voice of the other four; and if they ſhould not agree in ſuch choice, then the commiſſioners named by the two parties ſhall reſpectively propoſe one perſon, and of the two names ſo propoſed, one ſhall be drawn by lot in the preſence of the four original commiſſioners. When the five commiſſioners thus appointed ſhall firſt meet, they ſhall, before they proceed to act, reſpectively take the following oath or affirmation, in the preſence of each other; which oath or affirmation being ſo taken and duly atteſted, ſhall be entered on the records of their proceedings, viz.—I *A. B.* one of the commiſſioners appointed in purſuance of the 6th article of the treaty of amity, commerce, and navigation between his Britannic majeſty and the United States of America, do ſolemnly ſwear or affirm, that I will diligently, impartially, and carefully examine, and to the beſt of my judgment, according to juſtice and equity, decide all ſuch complaints as under the ſaid article ſhall be preferred to the ſaid commiſſioners; and that I will forbear to act as a commiſſioner in any caſe in which I may be perſonally intereſted.

"Three of the ſaid commiſſioners ſhall conſtitute a board, and ſhall have power to do any act appertaining to the ſaid commiſſion, provided that one of the commiſſioners named on each ſide, and the fifth commiſſioner ſhall be preſent, and all deciſions ſhall be made by the majority of the voices of the commiſſioners then preſent; eighteen months from the day on which the ſaid commiſſioners ſhall form a board, and be ready to proceed to buſineſs, are aſſigned for receiving complaints and applications; but they are nevertheleſs authorized in any particular caſes in which it ſhall apppear to them to be reaſonable and juſt, to extend the ſaid term of eighteen months, for any term not exceeding ſix months, after the expiration thereof. The ſaid commiſſioners ſhall

firſt meet at Philadelphia, but they ſhall have power to adjourn from place to place as they ſhal ſee cauſe.

"The ſaid commiſſioners in examining the complaints and applications ſo preferred to them, are empowered and required in purſuance of the true intent and meaning of this article, to take into their conſideration all claims, whether of principal or intereſt or balances of principal and intereſt, and determine the ſame reſpectively, according to the merits of the ſeveral caſes, due regard being had to all the circumſtances thereof and as equity and juſtice ſhall appear to to them to require. And the ſaid commiſſioners ſhall have power to examine all ſuch perſons as ſhall come before them, on oath or affirmation touching the premiſes; and alſo to receive in evidence according as they may think moſt conſiſtent with equity and juſtice, all written depoſitions, or books, or papers, or copies or extracts thereof; every ſuch depoſition, book, or paper, or copy, or extract being duly authenticated, either according to the legal forms now reſpectively exiſting in the two countries, or in ſuch other manner as the ſaid commiſſioners ſhall ſee cauſe to require or allow.

"The award of the ſaid commiſſioners or any three of them as aforeſaid, ſhall in all caſes be final and concluſive, both as to the juſtice of the claim, and to the amount of the ſum to be paid to the creditor or claimant: and the United States undertake to cauſe the ſum ſo awarded to be paid in ſpecie to ſuch creditor or claimant without deduction; and at the ſame time or times, and at ſuch place or places as ſhall be awarded by the ſaid commiſſioners; and on conditions of ſuch releaſes or aſſignment to be given by creditor or claimant, as by the ſaid commiſſioners may be directed: provided always, that no ſuch payment ſhall be fixed by the ſaid commiſſioners to take place ſooner than twelve months from the day of the exchange of the ratifications of this treaty."

From an attentive examination of this article, it will be found that none but *Britiſh merchants* and other ſubjects of his Britannic majeſty, are entitled to recover under it: that they muſt prove their loſſes have been ſuſtained by lawful impediments ariſing from the public authority of the government: that they have nor ariſen from the inſolvency of the debtor; not occaſioned by theſe impediments, but owing to cauſes unconnected with them; that they have uſed *due diligence* to recover theſe debts; and that no wilful negligence, omiſſion, or delay could be imputable to them in their attempts to *ſue* and recover in the courts of the ſeveral ſtates. Theſe muſt appear to every unprejudiced examiner to be the duties

eſtabliſhed by the treaty as neceſſary to entitle the claimant to recover. Indeed it ſeems not only to confine the deſcription of claimants to debtors, but to render it abſolutely incumbent on them firſt to have brought ſuit, and legally proved that the parties or their repreſentatives, who were their debtors, were inſolvent, or that their property was removed or not to be diſcovered, or made liable. This is ſo clear an explanation of the article, that I was aſtoniſhed to find in the caſe of *the Right Reverend Charles Inglis*, biſhop of Nova Scotia, and who was formerly a clergyman of New-York, and whoſe eſtate was confiſcated there, the three Britiſh commiſſioners, *Mr. Macdonald*, *Mr. Rich*, and *Mr. Guillemard*, had by force of their majority attempted to eſtabliſh *in ſubſtance* the following deciſion. That the date of the treaty *was the point of departure** ; and it ſhould depend upon the board, under the circumſtances of every caſe that may come before them, to agree or not as they ſhould think proper to admit the claim of a Britiſh ſubject who had been baniſhed and his eſtate confiſcated, although he had not ſued his debtor in the courts of the ſtate where he was reſident, and although it was preſumed, and indeed alledged the debtor was inſolvent: in ſhort, that the board would always leave themſelves at liberty to judge of the circumſtances under which claims like this might be ſuſtained, and how far it was or was not incumbent on a claimant to have previouſly aſcertained in a legal manner the inſolvency of his debtor. And in the caſe of Cunningham and company, they expreſsly declare, that the board would in all caſes in which they thought proper, exerciſe the right of granting to claimants *full compenſation* from the United States for all *the intereſt during the war*, which had been denied to them by the American judicials; and they termed this *denial of intereſt during the war by our judicials*; that "lawful impediment" which brought the claim within the letter of the treaty.

Had the board continued to ſit or to decide upon claims under the latitude and extent of the principles above ſtated, the three Britiſh commiſſioners, being upon all occaſions a decided majority, would have loaded the treaſury of the United States to an amount *in millions*, that our citizens can

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* *Vattel, lib.* 4. *ſec*; *and Wolf ſec.* 1229; *both contend that a treaty only binds ſubjects or citizens of a country from* its publication.

at preſent have no idea of. It is for this reaſon our commiſſioners, Mr. Fitzſimons and Mr. Sitgreaves have ſeceded; and I am only aſtoniſhed that Lord Grenville and Mr. Jay, who formed the treaty, or that either the Britiſh or American government could have expected from ſuch an article any thing but diſagreement and ſeceſſion: but that inſtead of healing, it would widen the breach, and open ſuch a door to fraud, impoſition and perjury, as had not yet been witneſſed among us. How was it poſſible for men the leaſt acquainted with the feelings and partialities of the human mind, to ſuppoſe that Britiſh and American commiſſioners could meet to arbitrate upon claims ſpringing from our revolution, but with the moſt diſcordant opinions? Could the conſequences of exile, confiſcation, or ſuſpenſion of the rights of Britiſh ſubjects, which the preſſing ſituation of affairs frequently rendered inevitable, be viewed by them with the ſame eyes? Or ought it not to be expected, as has proved to be the caſe, that they would carry into their arbitrations all thoſe paſſions and prejudices which have ſo invariably actuated the ſubjects and citizens of the two powers, whenever thoſe points have come into controverſy? In conſtructing this article, the negociators ſeem to have been leſs guarded and explicit, than they ſhould have been on queſtions of ſuch great conſequence, and in which ſuch differences in opinion were to be expected.

It is from this conſideration I hope the forbearance and conciliatory temper of both governments will derive the experience that is now found to have been neceſſary to the amicable adjuſtment of our mutual claims. They will hereafter be convinced, that the nature and limits (as to date) of the claims, with one particular deſcription of the creditors who are to be entitled as it reſpects the Britiſh debts, and the nature of the claims and proof as it reſpects the American demands for ſpoliations, *must be exactly defined and ſettled*, by negociators, poſſeſſing liberal and well-informed minds—by men incapable of being prejudiced by paſt tranſactions, or the former ſituation of the two countries, and who will take an enlarged view of the ſubject as it ought *now* to be conſidered. To miniſters like theſe, the adjuſtment will not be difficult. To the *British negociator* particularly it will at once appear, that it can never be the intereſt of his government to riſque the loſs of their beſt cuſtomer and endanger the peace of his country for claims *like theſe*:—that the acquiſition of the object ſought is not worth the hazard or expence of attempting it: that moſt

of the claims which were preſented were either unjuſt or fradulent, or would not have been thought of had not the laſt treaty with Mr. Jay unexpectedly given riſe to them: that the denial of moſt of them, or the renewing any right to claim, except in very particular and clear caſes of real Britiſh creditors, to be diſtinctly ſpecified, would create little or no diſappointment, and effectually ſhut the door to innumerable frauds: that while, as I have juſt obſerved, the ſubject was really in a national point of view of little conſequence to Britain, it was of the utmoſt importance to the United States; and would involve, if the reſolution intended by the Britiſh commiſſioners were to operate, the increaſe of a debt little ſhort of one half of the amount of their *original* one: that the taxes to defray it would fall entirely on *the landed* intereſt, and amount to a ſum extremely inconvenient to our citizeus: that the evil would not ſtop here; but that with the increaſe of taxes, every article and neceſſary of life would riſe;* and thus a laſting, and indeed a growing misfortune to our country be fixed upon it, perhaps for ages.

In the extenſive and enlightened view ſuch negociators would take of it, they certainly would differ from the Britiſh commiſſioners, and determine in all caſes where the inſolvency of the debtors was inſiſted upon, that ſuch inſol-

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* To ſhew the evils produced by the increaſe of taxes, as operating upon every claſs in the community, the following are the remarks of a late Engliſh writer on that ſubject, as it reſpects Great-Britain;

He ſays, "The evils already produced by the taxes to pay the intereſt of the funds, are likely to prove fatal to our national proſperity, by the enormous advance they have occaſioned in every article of expenditure. This advance will appear by the following table of prices in the years 1732 and 1780, taken from the moſt authentic accounts.

Prices in	1732	1780	1798
Beef, Mutton, and Veal.	1½*d.*	3½*d.*	6*d. to* 8*d.*
Butter,	3*d.*	7*d. to* 8*d.*	1*s. to* 1*s.* 3*d.*
Straw per load,	9*s.*	20*s.*	30*s.*
Hay per ton,	21*s.*	45*s.*	62*s.*
Pt. Wine in 1754.	24*l.*	50*l.*	70*l.*
Raw ſugar,		5*d. to* 6*d.*	9*d. to* 1*s.*

vency of the debtors was inſiſted upon, that ſuch inſolvency ſhould have been legally and previouſly proved in the courts of the ſtate where the debtor was reſident, or thoſe of the United States ſince their eſtabliſhment, and where it was practicable: that where this was not done, it was to be preſumed the reaſon for not doing it was, that the creditors knew they were either already paid, or that although the charges were made againſt perſons known to be ſolvent, they were ſo improper as not to be capable of ſupport: that truſting to the partialities and prejudices of a board conſiſting of a majority of Britiſh commiſſioners, they flattered themſelves they would be more likely to ſucceed than before a court of juſtice.

I do not mention this to queſtion the proper deciſions of the Britiſh commiſſioners, becauſe we are to hope they would have rejected them; but from the liſt of claims that have been already publiſhed, there is no doubt that thouſands of them have been exhibited, which are neither founded in truth nor juſtice; that thouſands have been transferred from the original holders, who were American citizens, to Britiſh ſubjects, to entitle them to claim before the board. Beſides, where can any demands or claims be ſo fairly or thoroughly inveſtigated, as in courts on the ſpot, or in the ſtates where the debts have accrued? From the appointments by the United States of agents in the different states, it is to be preſumed the board are always to ſit at the ſeat of government; therefore unleſs theſe claims are firſt legally examined by ſome court where the proofs can be queſtioned and the witneſſes croſs examined, how is it poſſible the United States can have complete juſtice done them? The agents of the United States are, I have no doubt, very able and diligent, but any examination by *an individual*, muſt be extremely unequal to that croſs examination and rigid and ſolemn enquiry which can alone take place in the preſence of a court, where every eye is upon the witneſs and every ear open to his teſtimony.

It has been urged, that moſt of the debtors being under baniſhment and confiſcation, they had not the means of ſuing: that the courts were ſhut againſt them; and that it would be hard the perſonal incapacity to ſue and recover in our courts under the 4th article of the treaty of peace, ariſing from the acts of attainder and confiſcation, ſhould now be urged as negligence on their part, and prevent them from recovering before the board.

It is fortunate for the United States, that this charge is eaſily removed by a reference to the proceedings of the ſeve-

ral ſtates, and to the judicial of the United States. Although no one can doubt, that under the law of nations *enemies' debts can be confiscated*;* yet from principles of generoſity, and not to injure, as might be the caſe in many inſtances, innocent men, whoſe opinions were favourable to our revolution, moſt of the ſtates forbore during the war to confiſcate Britiſh debts. In North-Carolina and New-York only, that I recollect, were they confiſcated. In Virginia they were ſequeſtered—and if I am not miſtaken, in the other ſtates they were untouched. This is the ſtatement made by Ellſworth, Chief Juſtice, in the caſe of Hamilton *vs.* Eaton, and I believe it to be correct. Hence it appears that in very nearly all the ſtates, Britiſh creditors or their agents were capable of ſuing whenever they thought proper, and that their not doing ſo is imputable to them as negligence. Whether they have been baniſhed or otherwiſe, the fourth article of the treaty removed every lawful impediment and authoriſed them to ſue. The treaty was the ſupreme law of the land, and every ſtate judge was bound to conſider it as ſuch, and as authoriſing "*creditors on either ſide*," to ſue and recover in the courts. Can any inſtance be produced where application has been made by a Britiſh creditor, to the judicial of a ſtate, and in which he has been refuſed? If not, we are to preſume the fact to be as has been ſtated, that the courts were always open to them: that Britiſh creditors under the treaty had a right to ſue at all times, and if they had properly contended the point to have ſuſtained and carried through every legal and well founded claim. If they did not, and have ſuffered from their commiſſion, it would be unjuſt to expect the United States will indemnify them for their neglect.

To remove however all doubt on the impropriety of the Britiſh commiſſioners' reſolutions in this caſe, and to ſhew, that ſince the organization of the federal judiciary in 1789, the courts of the United States have been conſtantly open to every claim under the treaty. I take the liberty of referring my readers to the important caſe of *Warre*, adminiſtrator of *Jones*, plaintiff in error, againſt Hylton and others, 3*d Dallas' Reports*, 199, adjudged in the ſupreme court of the United States, in February 1796, on a writ of error from the circuit court of the diſtrict of Virginia, after ſolemn arguments and great conſideration, by the opinions of four judges, a-

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* *See Bynkershoek, Quest. Jur. Pub. l.* 1. *c.* 7.

againſt the opinion of judge Iredell, who decided the cauſe in the circuit court. The judges delivered their opinions at great length, and this authority on peruſal will be found full and concluſive on all the points drawn into controverſy on this claim. I lament it is not within the compaſs of this publication to insert them; but as *the reports* are eaſily to be had, there will be leſs occaſion for it.

Upon the whole of the claim of Biſhop Inglis, it will be found theſe were the facts that were produced to the board: —That the claimant poſſeſſed the evidence of his debts; his debtors are ſtill ſolvent; the debts were ſecured by a lien on lands of adequate value; the conſtitution of the United States has repealed all laws repugnant to the treaty which interpoſed between the creditor and his remedy; the ſtate of New-York has adopted the conſtitution—the federal courts have cognizance of the demand: juſtice is adminiſtered in theſe courts with impartiality and effect, and the claimant can obtain in them a complete and adequate remedy according to the full extent of his right; he has neglected to ſeek his remedy from his debtors in the ordinary courſe of judicial proceedings, and is on every account precluded from demanding it of the United States. The American commiſſioners were therefore right to prevent by their *ſeceſſion* the adoption of ſo dangerous a reſolution—one neither within the letter or meaning of the treaty, and which would have opened a door for claims on the treaſury, the amount or extent of which cannot at preſent be calculated.

I come next to the reſolution propoſed by the Britiſh commiſſioners on the ſubject of *intereſt during the* war. In the caſe of Cunningham and Co. the Britiſh commiſſioners moved a long and *general reſolution* ending in this manner:—That no ſufficient cauſe had been ſhewn why, in awarding full and adequate compenſation for ſuch debts as had been proved, the United States ſhould not *be liable for all ſuch intereſt during the war*, as ſhould be awarded according to the nature and import, expreſs or implied, of the ſeveral contracts on which the claim is founded.

The extent and conſequence of ſo general a reſolution, and the very large ſum it would load the treaſury of the United States with the payment of, will be conſidered as ſufficient reaſons for giving this ſubject the examination its importance requires.

To thoſe who are acquainted with it, and have had acceſs to the letters and journals of our miniſters during the negociation for peace, it is well known this ſubject occaſioned

conſiderable difficulties: that our miniſters expreſsly under their hands, in forming the definitive treaty, acquainted the Britiſh plenipotentiary, that the *omiſſion of intereſt* in the 4th article was intended. Congreſs declares the ſame thing, and their declaration was communicated to Mr. Hartley. No idea was entertained that the article was meant to intend any thing more than that the *principle of the debt ſhould be recoverable*, and that the queſtion of intereſt ſhould be reſerved for the determination of *a jury*, on the particular circumſtances of each caſe in which it may be claimed.

This is the ſtate in which things ſtand at preſent with reſpect to claims againſt individuals. Numerous trials have taken place on the ſubject, and I believe in all the ſtates, but I ſpeak with certainty of this ſtate, intereſt has been uniformly denied, as being unjuſt and improper; nay, ſo uniform and numerous have been the deciſions denying it, that I am informed ſome of the federal judges who had doubts in their own minds on the queſtion, have nevertheleſs directed the juries to ſtrike out the intereſt during the war. The reaſon they gave was an unanſwerable one: that at this day to authoriſe a contrary deciſion, would be to introduce ſuch an irregularity of proceedings in our judicial, as would hereafter deſtroy the confidence of our citizens in their deciſions:—that each ſucceeding court might vary the opinions which were ſuppoſed to have been ſo often eſtabliſhed as law:—that it would be impoſſible to go back to, or unravel or expoſe again to legal inveſtigation, all the ſettlements which have amicably taken place in conſequence of former deciſions: that it would be the moſt flagrant injuſtice, after having in this ſtate particularly, in every caſe that had been tried, exonerated the debtor from intereſt, in one or two, or in the very few that may ſtill remain for deciſion, to charge them with the payment of it: that therefore it has been the uniform practice, and of courſe will continue ſo in all trials on queſtions of intereſt during the war, for the juries to ſtrike it out from the commencement of hoſtilities to the eſtabliſhment of peace. It will be my endeavor to ſhew, in a ſummary manner, that this denial of intereſt is founded on the ſtricteſt juſtice; regretting, as I have juſt done upon another occaſion, that I cannot from the nature of publications of this kind, go as fully into it as the ſubject would allow.

The deciſions in England, from which country we have in a great meaſure borrowed our juriſprudence, have eſtabliſhed that no intereſt ſhall be allowed on arrears of rents,

profits or annuities; on *book debts, open accounts, or ſimple contracts*; for goods ſold and delivered, or monies advanced without a note, on inland bills of exchange without proteſt, and on bonds after twenty years where no payment or legal demand can be proved within that period. There are many other demands which according to the laws of England, carry no intereſt; but thoſe abovementioned, particularly for book debts, open accounts or ſimple contracts, or goods ſold and delivered, are ſufficient to prove, that even according to the laws of England, a great proportion of the demands before the board ought not, according to impartial juſtice, to be allowed intereſt during the war, and compenſation from the United States.

The reaſons which have been generally urged againſt the claim of intereſt during the war, are the rules of conſtruction eſtabliſhed by the law of nations for the interpretation of obſcure and ambiguous facts:

The meaning of the word debts in the 4th article of the treaty of peace, as not comprehending intereſt, becauſe intereſt is recoverable at law in the technical form of damages for the detention of the debt, "being what is given more than the principal, that the creditor may not be a loſer."

The inference to be drawn from the demand of a deduction of intereſt during the war, which had been made on the part of the United States in the courſe of the negociation, previous to the formation of the treaty, and from a converſation ſubſequent to it, to wit, in the year 1786, between the Britiſh ſecretary of ſtate for foreign affairs and the American miniſter at London, in which the latter ſuggeſted "the policy of giving up the intereſt during the war, and agreeing to a plan of payment by inſtalments;" and the former, "after ſome ſlight expreſſions concerning the intereſt, wiſhed that the courts were open for recovering the principal," and obſerved "that the interest might be left for an after conſideration."

The nature and cauſes of the war, in the courſe of which "the products of the land were indiſpenſably neceſſary for defence against that which on the ſide of the Americans was a war for life, liberty, and property; a war attended with ſuch circumſtances of deſolation, as that after the application of what was thus neceſſary for defence, there was nothing left to an individual for paying interest on his debt:"

The interdiction of commerce to the United States by acts of the Britiſh Parliament, and the ſtoppage of acceſs

between the American debtors and Britiſh creditors, by which the detention of the debt during the war was unavoidable:

The departure of creditors and their factors from the ſtate, with their books and papers, ſo that nobody remained to receive payment of the debt:

The ſtriking analogy between the preſent caſe and that quoted from Viner's abridgment, in which it is ſtated "that where by a general and national calamity nothing is made out of lands which are aſſigned for the payment of intereſt, it ought not to run during the time of ſuch calamity:"

The equity, as between debtor and creditor, of denyiug intereſt during the war, whereby the creditor and debtor will be put upon a more equal footing, and a loſs will not be incurred by a debtor for the ſake of a gain to the creditor:

This evidence of ſuch equity, ariſing from the uniform practices of the courts and juries of the United States, which I have already alluded to, and who in all caſes diſallowed intereſt during the war—at leaſt in all in this ſtate, and in ſuch of the reſt as have come to my knowledge:

In order to explain the reaſons which I ſuppoſe have influenced theſe deciſions, in addition to thoſe already mentioned, it will be neceſſary to view the ſituation of the debts due to the Britiſh merchants previouſly to the war, and alſo that of their debtors at the commencement, during the war, and at its concluſion. I do this to enable me to make ſome compariſon between the Britiſh merchants and others trading to or having debts due them in America, and their debtors, American citizens; to ſhew that although Great Britain was unſucceſsful, and the United States triumphant how preferable the ſituation of a Britiſh creditor was at the concluſion of the war, to the American merchant or creditor: that although his country was ſucceſsful, the fortune of the latter was deſtroyed, while the rights of the former remained unimpaired: that this unparalleled public honor of the American nation, in preſerving the rights not only of foreigners and aliens, but of enemies, while it ſacrificed thoſe of its own citizens by tender laws and profuſe emiſſions of depreciated paper; this nice and ſcrupulous attention of her government, inſtead of exciting the admiration of the Britiſh cabinet, as it has done of the reſt of the world, ſeems only to give riſe to new demands and to deciſions unwarranted even by their own courts.

The Britiſh commiſſioners muſt ſurely have been acquainted with the manner in which our citizens became indebted

to their merchants before the war; being ſubjects of the ſame power, and their trade confined to the Britiſh dominions and merchants, there was an aſſurance and a confidence eſtabliſhed between them which can only exiſt in ſimilar ſituations and among ſubjects of the ſame government. From this aroſe the extenſive credits and claims of the Britiſh merchants—claims ſo large, that at the time our exportations were limited it was impoſſible for the American merchants to remit their creditors the ſums they owed. In this ſituation the war found them. The events during that period in which they were not only expoſed in common with others to the loſs of their negroes, and deprived of deriving any income from their lands, but the unparalleled deſtruction of that part of their fortunes which conſiſted of ſecurities for money, by the operation of ſevere and unequal tender laws, are too well known to require my illuſtrating them.

Let us here for a moment pauſe, and compare the ſituation of the Britiſh creditor with that of the American merchant or creditor at the end of the war, and ſee how far in the eye of reaſon or of juſtice, I was going to ſay in that of decency, he has a right to complain; or how far he had a right to expect, that while our merchants and monied men loſt by the war both principal and intereſt, he was not only to be ſecured in his principal, but completely indemnified by compenſation in intereſt for even being kept out of it during the war—a detention which, as has been proved, was owing to their own government and merchants—the firſt by driving us into the war and deſtroying all intercourſe, and the latter by removing themſelves and their papers out of the reach of their debtors.

Where, may be aſked, could we have found an American merchant or monied man, who would not at the peace have joyfully accepted the propoſal of loſing all intereſt during the war, and being placed in point of principal in the ſituation he was at its commencement? Look into the melancholy liſt of decayed families in every ſtate; at the thouſands of your own citizens who have been ruined by your tender laws and depreciated paper, and who have not received or ever will receive any ſatisfaction, except that of reflecting that it was done to ſave their country; and tell me whether you could view with ſerenity your public treaſure drained, and your citizens, taxed as they are already, ſtill farther harraſſed to pay a demand ſo unexpected and unjuſt as this is.

The equity of the Engliſh deciſions has eſtabliſhed the principle, that even in the caſe of lands aſſigned for the payment of intereſt, if by the interference of a national calamity nothing can be made out of them, there intereſt ſhall not be chargeable. If therefore, by their own deciſions in the caſe of lands, a ſolid immoveable property, on which, although the improvements may be deſtroyed, the land itſelf muſt remain, this equitable deciſion has taken place; if this is univerſally acknowledegd as Engliſh law, how much more applicable is the principle in the caſe of the American merchants, whoſe funds to pay their European creditors being deſtroyed by the operation of laws the conſequence of war, and that war occaſioned by Britain, not only the means of raiſing the intereſt, but the principal aſſigned for that purpoſe and for the payment of the debt, is forever ſwept away!

Can the Britiſh commiſſioners, or their nation, be unacquainted with the ſituation of the United States at the formation of the peace; and in deciding whether intereſt ought or not to be charged, is not this an important conſideration? Are they to be told that the invaſion of their armies and the deſtruction of our commerce had reduced our citizens to a greater degree of poverty than they had ever experienced? That in the ſouthern ſtates particularly, where their fortunes had been totally unproductive forthe firſt ſix years, and either actually ſequeſtered by the Britiſh government or within their power for the laſt two or three, they were an expence and not a beneſit to their owners? Or can they be ignorant, that from the peculiar ſituation of our merchants and monied men, who relied altogether on the ſums due them in America for remittances to their European creditors, that it was on them the war, with all its loſſes and conſequences, fell with unuſual ſeverity?

If it be an eſtabliſhed rule, "*That in caſe of accidents which happen without any fault of the party, he will not be liable to reparation for damages, by the rule that nobody is to anſwer for accidents except there be ſome fault on their part:*"* If it is another rule, "*that where misfortane has happened without the fault of either party,*" there is no reaſon to throw off the loſs from one innocent man to another *innocent man;* "and that in ſuch caſe the condition of the defendant is the prefer-

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* *See Domat, lib.* 3.

able one :"† If " it would be unreaſonable, that thoſe things which are inevitable, which no induſtry can avoid, no policy prevent, ſhould be conſtrued to the prejudice of any perſon in whom there is *no laches* :‡" If theſe are the eſtabliſhed rules *of Engliſh* law—to what war or to whom can they be more ſtrongly applicable than to our revolution and our citizens? They have governed our courts in all their deciſions, and ſo ſtrong is their equity, that they will, I truſt, be the principles on which our differing claims may yet be amicably adjuſted.

The Britiſh commiſſioners, from their reaſoning, ſeem to be of opinion, " *that the debts exiſted, and that all their rights and obligations, whether of intereſt or otherwiſe, remained attached during the war:* that the laws of war do not deſtroy private contracts."

In the preſent civilized ſtate of mankind, it is true a war between different *and independent* nations, whoſe ſubjects or citizens *are aliens* to each other, does not deſtroy *private contracts*. It is however only for a few ages that this refinement has exiſted: formerly, not only all contracts were annihilated, but the fortune *and even perſons of the conquered* were conſidered as the property, and at the diſpoſal of the *conqueror*. Among civilized nations it is now different. The interference of war, although conſidered as a national calamity, and as ſuſpending all intercourſe between the parties, leaves the principles of private juſtice inviolate, and an accommodation revives every contract that exiſted before the rupture. But the late war differs extremely from a common war between nations independent of each other before its commencement, where *the government and laws remained unaltered*, and war has only occaſioned a temporary ſtoppage of intercourſe. *In revolutions* more important reaſons occur: here, not only *all private*, but the higher and more ſolemn, the *public or ſocial compact, the relation* between the two people being deſtroyed, involved in its deſtruction all others; the powers of the government were taken into the hands of the people, and it was from the confederation and the ſtate conſtitutions, and afterwards from that of the United States, our preſent laws and policy have originated and been eſtabliſhed. In many inſtances it has been altered and accomdated to the nature of our government; but, wherever it could without inconvenience, *the common law of England*

† 3*d Burr*, 1357.
‡ *Powell on contracts*, 446.

was adopted—the debts therefore depending on the former laws and *the relation* between the two people, being deſtroyed with them, could only have received *a new exiſtence from the treaty*; § the claim *was dormant* during the war. If their rights remained unimpaired, and by the laws of nations each party was obliged to view them in their original ſituation, why the neceſſity of making it an article of the treaty? Such articles are I believe *unuſual in treaties* of peace; but the *true reaſon* no doubt was to prevent the argument of the debts *being extinguiſhed*; and the anxiety with which Great Britain inſiſted upon it, is a proof that they were aware of its force.

But even if the debt did exiſt, the charge of intereſt is certainly unfounded. Intereſt is a rent, or ſum paid for the uſe or detention of money. If, as has been already ſtated, from the interference of a national calamity, and war is ſuch, the principal cannot be uſed, or by the operation of law becomes deſtroyed, there, intereſt ſhall not be charged, not even if it was expreſsly ſpecified and inſerted in that contract. If the fourth article, inſtead of merely ſaying "debts," had gone further and ſtipulated "debts with lawful intereſt"—even then the intereſt during the war would not have been recoverable, becauſe the claim is not a lawful one. Our courts, governed by principles of the ſtricteſt juſtice, and ſanctioned by Engliſh precedents, have determined that intereſt during the war was not recoverable according to law; and therefore in my judgment, the Britiſh commiſſioners have exceeded their powers, or attempted to do ſo, in the general reſolution I have quoted. They ought to have known that the queſtion, whether intereſt is or is not allowable on contracts, belongs excluſively to juries: that it is one of thoſe that cannot properly be tried otherwiſe: that it is what the law calls *an action ſounding in damages*, and which can alone be aſcertained by a jury of the vicinage: that being acquainted with the defendants and their circumſtances, they are the beſt judges on occaſions of this ſort: that being choſen by lot, and indifferent to the perſons concerned in the ſuit, and acting upon oath, it was much more likely there would be impartiality in the mode of aſſeſſing damages, than in any other: that it was a known

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§ *Grotius ſays*, "*To whomſoever a thing is conceded by the peace, to him alſo the profits are conceded*, from the time of the conceſſion, *but not back.*"

and eſtabliſhed rule of law, that all actions of damages muſt be tried by a jury; and that in every attempt that has been made to have the queſtion of intereſt during the war determined by the judges of the United States, as chancellors or *judges in equity*, they have invariably refuſed, and referred it to the deciſion of a jury. No queſtion certainly is more proper for the excluſive determination of a jury, than that of *intereſt during the war*. It is one which muſt depend upon it in many domeſtic circumſtances ſpringing from the war, and which can alone be known to perſons reſident in the ſame ſtate with the defendant; that to decide upon it without a knowledge of theſe circumſtances, and a perſonal examination of the witneſſes, would be to depart from that courſe of proceeding which can alone produce ſubſtantial juſtice: that from the conſtruction and character of our courts, the ability of the judges, and the integrity and diſinterestedneſs of our juries, there was no reaſon to doubt the propriety of their deciſions: that in all caſes where the claim had been ſolemnly argued and denied, the commiſſioners ſhould be convinced the interest ought to have been recovered: that it was the practice of all nations to ſuppoſe, that juſtice was ably and faithfully adminiſtered in the courts of each other; to give full credit to their proceedings, and, where the juriſdiction was admitted, to be bound by their deciſions: that the intercourſe neceſſary between them rendered this mutual confidence in their tribunals indiſpenſible: that therefore, in all caſes where interest during the war had been denied by our judicials, it was the duty of the Britiſh commiſſioners to have acquieſced, and confined themſelves only to the examination of the principal and interest ſince, where it was admitted; and to the legal impediments that have been interpoſed: that ſo tender were our citizens on this ſubject; and on the *ſole and excluſive right* of juries to determine the question of interest during the war, that even in the circuit courts of the United States, when once the question was decided there by a jury of *the vicinage*, our citizens have conſtantly denied the right of the judges to grant an appeal on this *particular queſtion*, even to *the ſupreme court* to be held at the ſeat of government: that the reaſon of an appeal from the opinion of one of the judges of the ſupreme court to that of the whole was, that in caſes of conſequence and difficulty, it was to be preſumed there muſt be more knowledge and experience, and certainly more ſafety in the opinions of *ſix* judges, than in that of *one*; that therefore in all caſes in equity, and on all points proper for the deciſions of the judges, appeals ought

to be allowed; but that in actions founding in damages, and particularly in this of intereſt during the war, no appeal can be granted, becauſe, being excluſively reſerved for the opinion of a jury, it would only be an appeal from one jury to another jury; from one of *the vicinage* who can alone be acquainted with the parties and their circumſtances, and partake of the qualities juries are intended to poſſeſs, to another of ſtrangers, totally unacquainted with them, before whom no perſons could be brought and croſs examined, and who as a jury muſt from the diſtance of the reſidence of the parties, the inevitable abſence of witneſſes, and the difficulty and danger of tranſporting books and papers, be without the means of deciding either with ſafety to themſelves or with juſtice to the concerned.

I know of no attempt to have ſuch an appeal as this granted. If it ſhould be made, we are to ſuppoſe the wiſdom and integrity of the judicial will reject it. From the little doubt there is on the point, it is to be preſumed no ſuch attempt will be made. I have introduced it here merely to convince the Britiſh commiſſioners, that this is a ſubject they ought not to have touched: that ſubſtantial juſtice to the United States required them on this point to have acquieſced in the deciſions of our juries:—that it was improper for our judges *without a jury* to decide on it, even in *the ſtates where the defendants reſided*; it was extremely ſo indeed, for the commiſſioners, to whom it muſt have been much more inconvenient, indeed to whom it muſt be impoſſible to obtain the neceſſary testimony, either by the preſence of witneſſes, or the production of papers: that where the parties were not, or did not conſider themſelves perſonally intereſted *and were not to pay*, but knew the United States must, they would be inattentive to the collection or the tranſmiſſion of evidence: that where the distance was great, it would be impoſſible to obtain perſonal attendance, as the commiſſioners could iſſue no compulſory proceſs to oblige it: that all the vigilance and care of the ableſt agents would be inſufficient to remedy theſe defects; and that the examination by commiſſion was open to ſo many errors, that it was not upon the looſe and vague testimony which was to be thus obtained, the United States ſhould be loaded with the payment of ſo conſiderable a debt: that for all the reaſons which have been urged, the attention of the commiſſioners ſhould have been directed to examine only the nature and amount of the principal at the commencement of the war, the interest where legal ſince, and the legal impediments;

and having done this, they would find, that in all cafes where they had a right under the treaty to fecure to their merchants and fubjects payment from the United States for the principal of their debts at the beginning of the war, and the interest fince its concluſion, they would then be in a ſituation to which even the hopes of our diſtreſſed merchants and creditors, whoſe families have been ruined by our tender laws, have never yet been permitted to aſpire.

There are ſome other points in controverſy between the Britiſh and American commiſſioners, which I have not leiſure at preſent to diſcuſs. My intention is to induce the Britiſh government to attend to the arguments which may be uſed in ſupport of our claims; and to convince them that ſo far as their ſubjects are juſtly entitled, the United States will make ample compenſation: that they will expect it in return for the loſſes of their citizens: and that they are ready again to treat upon theſe points with the ſincerity and candor which have ever diſtinguiſhed them.

If Great-Britain wiſhes to continue on friendly terms with us, ſhe will agree to this and attend to our reaſonings; but if elated with ſucceſs ſhe is ſo impolitic as to look to this country with other eyes than thoſe of peace and commerce, ſhe will magnify her claims and render an adjuſtment as difficult as poſſible. If ſuch is her ultimate object, it would perhaps be wiſe in her to conſider our diſtance and the inconveniences of even a ſerious controverſy with us: that although it is to be confeſſed, licentiouſneſs, avarice, and rapine have but too often ſtained the cauſe of republicaniſm in Europe: it is at the ſame time to be remembered, that public virtue, honor and juſtice, have always graced its annals here: that the rights of ſuffrage, repreſentation, and of jury, are ſacredly preſerved to us: that corruption is as yet a ſtranger: that although there may, as in all others, be errors in the adminſtration of government, yet by ſlight changes they can be ſoon made to vaniſh, and leave it in its original purity: that enjoying unqueſtionably the greateſt political happineſs upon earth, mild and gentle in their deportment to all nations, and unwilling again to tread the thorney path of war, our citizens are ſtill always prepared to defend their public honor, and cheriſh their government and its rights with the attachment and affection due to ſo excellent a ſyſtem.

A SOUTH-CAROLINA PLANTER.

Charleſton, Oct. 26, 1799.

APPENDIX.

(From a Connecticut Newspaper.)

DANBURY, September 16, 1799.

WE, the ſubſcribers, ſelect men of the town of Danbury, in the ſtate of Connecticut, certify, that we have always been inhabitants of ſaid town, and are from forty-five to fifty-ſeven years of age, and have never known an inhabitant of this town by the name of Jonathan or Nathan Robbins, and that there has not been, nor now is, any family known by the name of Robbins, within the limits of the town.

ELI MYGOTT,
EBEN. BENEDICT.
JUSTUS BARNUM,
BENJAMIN HICHCOK.

DANBURY, September 16, 1799.

The ſubſcriber, late clerk for the town of Danbury, in the ſtate of Connecticut, certifies that he kept the town records for 25 years, viz. from the year 1771, until the year 1796; that he is now fifty-ſix years of age, and that he never knew any perſon by the name of Robbins, born or reſiding in the ſaid town of Danbury, during that term of 25 years, before or ſince.

MAJOR TAYLOR.

(From a Charleston Paper.)

Facts, relative to THOMAS NASH, *alias* NATHAN ROBBINS.

Charleſton, Nov. 27, 1799.

SIR,

IN conſequence of the very great oppoſition made to the delivering up, under the 7th article of the treaty of Amity, &c. Thomas Naſh, alias Nathan Robbins, one of the principal mutineers on board his Britannic majeſty's late ſhip Hermione, and of the numerous publications on that ſubject, as well in this as others of the United States, I wrote to admiral ſir Hyde Parker, requeſting he would ſend me minutes of the court martial, meaning to communicate the contents to you; but being informed that a compliance with ſuch requeſt would have been contrary to the rules of the Britiſh navy, I beg leave to encloſe you a copy of the admiral's anſwer, which I conſider fully adequate to the purpoſe I intended.

Whilſt on this ſubject, I cannot help remarking, that about the time my counſel moved for a *habeas corpus*, I happened to be in the court of Common Pleas, when Mr. Ker, a gentleman of the bar, addreſſed me, and mentioned his intention to oppoſe the delivery of the priſoner, under an idea of his being a citizen of the United States of America; on this I expreſſed ſome ſurprize, that a perſon ſhould at ſo late a day intereſt himſelf in behalf of the priſoner, particularly, as his majeſty's cutter Sprightly had been here a very ſhort time before for the purpoſe of carrying him off; and that it was from your opinion of the tranſaction being an executive one, that he was not then delivered up; he anſwered that Mr. Sasportas* had ſpoken to Colonel Moultrie and himſelf.

I have the honour to be, Sir,

Your moſt obedient humble ſervant,

BENJAMIN MOODIE.

The hon. THOMAS BEE, Eſq.

* Mr. Saſportas was the agent for the French Republic at the time their cruizers were permitted to ſell their prizes in this port. The records of the diſtrict court in admiralty cauſes will prove this.

Extract of a letter from Admiral Sir HYDE PARKER, *to* BENJAMIN MOODIE, Esq. *his Britannic Majesty's Consul in Charleston, dated on board the Abergavenny, in Port Royal harbour, Jamaica, 13th September,* 1799.

"SIR,

"I have received your letter of 21st of last month, with a copy of another, (not yet received) of the 3d of same month; and in answer to both am to acquaint you, that Nash has been executed, and hung in chains, agreeable to the sentence of a court martial; and that he confessed himself to be an Irishman: and it further appears by the Hermione's books,† that he was born at Waterford; on the 21st December, 1792,‡ entered a volunteer on board the Dover, received 3l. bounty money; and was removed to the Hermione 28th January, 1793. And with respect to transmitting minutes of his trial, that is not in my power, but rests with the lords of the admiralty only."

CHARLESTON, Nov. 27, 1799.

I was present at the court martial on board his majesty's ship Hannibal, at Port Royal, Jamaica, for the trial of Thomas Nash, a seaman, late of the Hermione frigate, for piracy and murder.

The evidences which were produced against him, (four in number) who belonged to the Hermione at the time the murder and piracy took place, knew him always by the name of Thomas Nash, nor did he to their knowledge ever assume any other name; the witnesses also fully prove, that Thomas Nash was the person who killed lieutenant Foreshaw. Nash made no defence, nor did he at any time of the trial call, or endeavor to prove himself, a subject of the United States of America. On the scaffold, a few minutes before he was run up to the fore yard arm of the Acasto, he addressed the crew of that ship, advising them to take timely warning by his fate.

† Copies of the ship's books and accounts, of the British navy, are made up every two months, and transmitted to the lords of the admiralty. The admiral procured transcripts of this ship's books, in order to describe the persons and names of the crew.

‡ Jonathan Robbin's certificate was dated at New-York, 20th May, 1795.

I had the command of the boats of the ſquadron on the the day of his execution, and attended with them to ſee his body hung in chains, agreeable to an order for that purpoſe from Sir Hyde Parker, Kt. commander in chief, &c. &c. at Jamaica.

GEO. HANS BLAKE,

Late commander of his majeſty's ſloop L'Ameranthe.

The foregoing was duly atteſted before me this 29th November, 1799.

JOHN MITCHELL, Q. U.

To Benjamin Moodie, *Eſq. his Britannic Majeſty's Conſul in Charleſton.*

SIR,

Having diſcharged my duty as a counſellor in the caſe of Jonathan Robbins, and having but little time to beſtow on newſpaper altercations, it was neither in my expectation nor my wiſh, to be called forth further on this ſubject, and eſpecially, as the author of a publication in a newſpaper: but, ſir, I find I am indebted to your politeneſs, and moderation, or the zeal of your printer (if he is your commentator) for this occaſion of my coming forth, in this publication.

In your letter of the 27th ult. to Judge Bee, reſpecting the caſe of Robbins, you conclude by ſaying, you were informed by Mr. Ker, that Mr. Saſportas had ſpoken to Mr. Ker and myſelf as Robbins' counſel; and with an aſteriſm annexed to the word Saſportas, refereing to an annotation below, this brilliant note is in Italics, as follows: "*Mr. Saſportas was the agent for the French Republic at the time their cruiſers were permitted to ſell their prizes in this port. The records of the Diſtrict Court in Admiralty cauſes will prove this.*"

If I underſtand right, and can read right; and if I underſtand the ſentiments and views of the advocates of your nation in this country, (and I think I have contemplated them ſince the dawn of our revolution) this bright note and thoſe capitals, are intended as an inſinuation to the world, that

French influence was at the bottom of Robbins' defence, conſequently was the mover of his counſellors. If I am miſtaken, ſir, in my ſentiments, you will pardon me, and I hope at the ſame time correct the error; but ſir, theſe ſentiments are the natural impreſſions of your conduct, and I will hold them till properly effaced.

The cry or inſinuation, ſir, of French influence, may be an admirable engine of Britiſh policy in this country, and ſerve to promote many of their purpoſes: but as to myſelf, or any injury it may work towards me in this caſe, you have loſt your aim, ſir. The *mens conſciæ ſibi recti*, defies your attack; your ſhaft has no ſting, ſir; its poiſon is ineffectual; and your own diſappointment ſhall be your own puniſhment.

When I was firſt called on in Robbins' caſe, I conſidered it generally; and gave my opinion, that I thought ſuch was the prevailing influence of opinions and ſentiments of thoſe in power, that every effort would be vain: he had not then been repreſented to me as an American citizen, and I conſidered the caſe on the point of *juriſdiction* only. I gave it but a ſhort conſideration, and ſoon determined, and thought no more of it. Matters reſted thus for ſome days 'till the day before Robbins was tried: I was then accidentally informed in converſation with a friend, that Robbins was an American; I was ſtruck, and alarmed, to think I had deſerted him. I immediately went to Mr. Ker, and deſired him to prepare himſelf for the argument next morning. I went home and conſidered the caſe, and met Mr. Ker in court the next day.

I had never yet ſeen Robbins, nor had I ever any intercourſe with him, 'till he was pointed out to me, and I went up and ſpoke to him in court the day of his trial; nor had I till then ever ſeen one of his papers. On my coming into court, amongſt the firſt things I did, I aſked the clerk for the papers, and amongſt them found *Robbin's certificate of nativity and citizenſhip:* I examined it, and found it had every mark of authenticity, no eraſure, no obliteration: that its colour and appearance were natural, and correſpondent with its date, and that the hand-writing of the Notary was genuine, and can be proven here. But one thing further ſtruck me: on enquiring of the clerk, if this paper was found on Robbins when firſt taken, and being informed it was, I was of opinion 'twas genuine; and was clear, if 'twas not, 'twas no fabrication in Charleſton.

Under theſe circumſtances, ſir, I undertook the cauſe of Robbins; a cauſe, ſir, in which the rights of mankind and

thoſe of my country were deeply involved; a cauſe, ſir, which I held myſelf bound in duty, as an American, to defend and ſupport; which pointed at the conſtitution and vital principle of American independence. And give me leave further to tell you, that in this cauſe, I neither undertook it from French influence or an idea of advancing their intereſt, nor from the promiſe or expectation of any fee or reward; and that I never have received any ſuch. Every one, ſir, who knows me, knows my politics; they have been uniform, ſince 1775, and I hope will continue ſo to my lateſt hour; I honor and reſpect all nations—but I hate tyrants; I love my country, and will defend its freedom.

I am ſir, with due conſideration,

Your humble ſervant,

ALEX. MOULTRIE.

Meſſrs. FRENEAU & PAINE,

The unexpected attack of Mr. Moodie, the Britiſh conſul, in Timothy's paper of Monday laſt, I am induced to notice; not from any apprehenſion of its injurious effects on the public mind, reſpecting my conduct in the caſe of Robbins, becauſe the publication bears its own inſignificance on the face of it, but as he has thought proper to arraign the motives which induced me to employ counſel in his behalf, I ſhall briefly relate the circumſtances which brought Robbins under my obſervation.

Being drawn to ſerve as a grand juror for the diſtrict of Charleſton, we were requeſted by the court to viſit the gaol, in order to make a report of the ſtate of the ſame.—In the exerciſe of this duty, I ſaw Robbins, confined in irons, who communicated to me the cauſe of his commitment, and his defence to the charge, viz. that of his being an American citizen, impreſſed by the Engliſh. From his relation, and his certificate of citizenſhip then ſhewn to me, I was induced to employ counſel in his behalf, in order that his innocence or guilt might be eſtabliſhed by an appeal to the laws of the country. The world muſt be at a loſs to trace any connection between my conduct on this occaſion, and my having acted as commercial agent for the Republic of France, upwards of ſix years ſince. Hence it follows, that Mr. Moodie can have no other object in view,

than a desire to establish a prejudice against me in the eyes of my fellow-citizens.

Mr. Moodie states, that he expressed his surprize to Mr. Ker, that at so late a day he meant to oppose Robbins' being delivered up. The fact is, I had spoken to the counsel the very day I saw the prisoner in gaol; but his avocations, I presume, did not permit him to attend to the case, The consequence was, that rather than the cause should be wholly neglected, I applied to other counsel, with whose exertions I have no reason to be dissatisfied. But I presume this is the first instance where a prosecutor has assumed to himself the right of dictating to the accused party, when, and how he shall seek redress.

I am, Gentlemen,

Your most obedient servant,

ABRAHAM SASPORTAS.

N. B. No one knows better than Judge Bee, that I was agent to the French Republic, and no one knows better than myself, that Mr. Moodie was agent for the British government: by the repeated vexatious impediments which were raised up by him in every case, without the colour of a legal defence. The numerous decrees of the supreme court of the United States, in favor of the captors, prove the fact.

FINIS.